



# How to prepare for the **best** **interests duty** A mortgage broker's guide



# The best interests duty – a badge of honour for brokers

We're confident that the majority of Connective mortgage brokers are already serving their customers' best interests. The best interests duty (BID) obligations, which come into effect on 1 January 2021, enshrine this practice in law.

The law sets out a list of guiding principles that mortgage brokers must follow when providing credit assistance. These are largely based on improving how you gather and document information about your customer's individual circumstances, objectives and situations; how you assess relevant products for their needs; and finally, how you present and make your recommendations, educating them to make informed decisions.

We believe that as a result of brokers providing enhanced support, communication, documentation and engagement, customers will receive even higher levels of credit assistance and customer service, ultimately leading to more business.

Connective will continue to provide you with the tools, training and support you need to help your business be compliant under this new law.

The best interests duty gives the mortgage broking industry an advantage— it sets mortgage brokers apart from the banks and other lenders. A lender only has their own suite of products to recommend. A mortgage broker can advertise that they have access to hundreds of different product options from dozens of lenders and that they're legally obliged to act in their customers' best interests to achieve a greater customer outcome.

We know how much work you put in behind-the-scenes to support your customers every day. Now it's time to show them what you do — take your customer on the journey, so they understand that you always have, and always will put them first.

## Mark Haron

Executive Director  
Connective



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# 1

## Best interests duty 101

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The best interests duty (BID) obligations are designed to align the interests of mortgage brokers more closely with the interests of their customers. BID applies to products that are regulated under the National Consumer Credit Protection (NCCP) Act: any products provided to customers for personal, domestic, or household purposes.

### **BID comes into effect on 1 January 2021.**

BID works in conjunction with — and goes above and beyond — a mortgage broker's existing responsible lending obligations (RLO) of assessing a product as 'not unsuitable'. It requires mortgage brokers to act in the best interests of their customers and show evidence of this every time they provide credit assistance. Mortgage brokers must comply with both BID and RLO.



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*I'm a firm believer that 'a rising tide will raise all ships'. The best interests duty will help us collectively deliver better customer outcomes, and in turn, will drive a stronger and more successful industry.*



## 1.1 What are the goals of the best interests duty?

- ✓ Improve customer outcomes.
- ✓ Ensure mortgage brokers act in the best interests of their customers.
- ✓ Reduce potential for conflicts of interest to impact the assistance customers receive from brokers.

## 1.2 Who does the best interests duty apply to?

BID applies to mortgage brokers, defined as someone who:

- ✓ carries on a business of providing credit assistance in relation to credit contracts secured over residential property
- ✓ does not act as the credit provider in relation to most of those contracts, i.e. you are not the lender
- ✓ provides credit assistance in relation to credit contracts offered by more than one credit provider, i.e. you do not act solely for one lender.

You are likely to be considered a mortgage broker and subject to BID if any one of the following applies:

- ✓ you have assisted a customer with a home loan in the past 12 months
- ✓ you advertise that you can assist with home loans (even if you have not lodged any home loan applications)
- ✓ you hold residential loan accreditations (even if you have not lodged any home loan applications).

## 1.3 When does the best interests duty apply?

BID applies each time you provide credit assistance, including when you:

- ✓ suggest that your customer applies, or assist your customer in applying for a particular credit contract
- ✓ suggest that your customer applies, or assist your customer in applying for an increase to the credit limit on an existing credit contract
- ✓ suggest that your customer remains in an existing credit contract.

It is a point in time assessment based on the facts and information available to you at that point in time.

## 1.4 The principles of the best interests duty

The BID that applies to financial advisers sets out prescriptive rules and processes they must follow in order to adhere to the law.

The BID 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 customer you assist in order to achieve the desired outcomes.

These principles cover three main elements outlined below. All are separate obligations that operate in conjunction with each other and apply each time you provide a customer with credit assistance.



### Best interests duty

You must act in the best interests of your customers.

Find out more in section 1 Best Interests duty 101.



### Conflict priority rule

You must prioritise your customers' interests when providing credit assistance.

Find out more in section 2.3 Understanding the conflict priority rule



### Conflicted remuneration

You must not receive conflicted remuneration.

Find out more in section 4. Understanding conflicted remuneration

## 1.5 Obligations for Australian Credit Licence holders

Credit licensees, such as Connective, must take 'reasonable steps' to ensure that their authorised loan writers comply with their BID obligations. This could mean monitoring, supervising, creating processes and procedures, providing training and conducting file reviews.

For mortgage brokers who operate under their own Australian Credit Licence (ACL), you will need to take proactive steps to prevent contraventions of BID, rather than simply responding to any contraventions after they have occurred.

It's the ACL holder's responsibility to ensure that appropriate records are kept which demonstrate the broker's compliance with the obligations. If your broker contravenes BID, then you as the ACL holder could also be in breach if you can't show you've taken steps to ensure your representatives comply.

## 1.6 Penalties for breaching the obligations

There are steep penalties for non-adherence to the obligations. Currently, the maximum penalty is 5,000 penalty units (\$210 per penalty unit).

# 2

## How to prepare your business for the best interests duty

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Customers may be wondering why the volume of paperwork and the number of questions mortgage brokers have to ask has skyrocketed in recent times, especially compared to banks. Most customers don't realise how much mortgage brokers have to do to remain compliant with their responsible lending and best interests duty obligations.

### 2.1 Educating and engaging your customers

Instead of thinking about BID obligations as an obstacle, think of them as an advantage, a way to build trust and confidence with customers. Mortgage brokers must serve and prioritise their customers' best interests and they're equipped to do that by being able to access hundreds of different products from dozens of lenders, unlike the banks.

Not only that, mortgage brokers have a duty to educate their customers, taking them on the journey so they are equipped to make informed decisions. Customers who feel engaged and empowered throughout the process, and are able to make their decision with confidence, will become stickier customers as a result.

Mercury has a range of fact sheets you can email your customers. Record the email in Mercury to demonstrate you have taken the steps to educate them. The customer fact sheets in Mercury cover the following topics:



#### Connective tool

There is a range of customer fact sheets in Mercury which explain various components of the mortgage process. [Find out how to access the fact sheets here.](#)



## 2.2 Ensuring you have a suitable lender panel

As a mortgage broker, you should be accredited with a reasonably representative panel of lenders. You should also be satisfied that the products you can access and recommend sufficiently allow you to act in your customers' best interests.

### BID ready tip

If you're unsure if your lender panel is BID compliant reach out to your Connective Compliance Support Manager.

You will need to exercise your own judgment as to whether you are accredited with a 'reasonably representative panel of lenders'. This will depend on the market(s) you operate in and the customers you assist. It does not mean you need to be accredited with 50 lenders, just enough lenders to be able to offer choice to your customers.

When reviewing your lender panel consider having a mix of major lenders, regional lenders and non-bank lenders to ensure you have the optimal mix to satisfy the needs of your customers.

### BID ready tip

If you are not satisfied that the products you can access allow you to act in a customer's best interests, you must not provide credit assistance.



Big banks



Regional banks



Non-bank lenders

Make sure you're aware of:

- ✓ the products and features available in the market and through Connective's panel, so you can determine if your accreditations are sufficient
- ✓ which lenders you are submitting applications to. If you are only submitting 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 customer needs to be justified based on that customer's individual circumstances.



### Connective tool

The Connective Community is a great place to connect with broker peers and lender BDMs to receive quick answers to your loan scenarios and the latest lender news and policy updates. Access the Connective Community by clicking the icon in Mercury Nexus.

## 2.3 Understanding the conflict priority rule

The best interests duty and the conflict priority rule are separate obligations that operate in conjunction and apply each time a mortgage broker provides credit assistance.

### BID ready tip

The existence of a conflict does not always mean you cannot provide credit assistance. You just need to ensure your customer's interests are prioritised and your recommendations are justified.

The conflict priority rule means that you must not recommend a product or service of a related party that would create extra revenue for yourself, your credit licensee or another related party, unless doing so would also be in the customer's best interests.

You should always clearly disclose any conflicts or potential conflicts to your customer at the beginning of your interaction with them.

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

### Complying with the conflict priority rule

1. Identify what interests you or any related parties have.
2. Consider whether any of your relationships with referral partners create any conflicts.
3. In situations of conflict, consider what a mortgage broker in your position without a conflict of interest would do.
4. Maintain accurate records and file notes showing how product recommendations are in the customer's best interests.
5. Maintain a conflict of interest register. Ensure conflicts of interest are recorded and detailed notes are kept to explain how each conflict of interest is resolved.
6. Regularly monitor and supervise representatives that are part of your business to ensure they comply with the conflict priority rule and your internal governance processes.
7. If you have a conflict of interest and you are unable to prioritise your customer's interests, do not provide credit assistance.

Here are some common conflicts for you to consider.

	Potential conflict	Solution
<b>Role conflicts</b> can occur when you take on multiple roles in the same related transactions.	<p>If you are acting as the mortgage broker for the purchaser and the property agent for the vendor.</p> <p>This will cause a conflict due to you receiving income from two parties and having to serve the interests of different people.</p>	<p>You will either need to act for only one of the parties (if you cannot act in your customer's best interests) or ensure that there is no possibility your recommendation can be construed as not being in your customer's best interests.</p>
<b>Related party or credit provider conflicts</b> can occur when you have complex ownership structures or commercial ties.	<p>If you recommend a loan provided by a lender owned by a director of your business, regardless of whether you receive any additional fee from that lender.</p> <p>For brokers operating under simple business structures, this should not be an issue.</p>	<p>You are required to disclose these conflicts.</p> <p>Where you cannot give priority to your customer's interests ahead of yours or those of another party, you must not provide credit assistance.</p>
<b>Hidden conflicts</b> can arise due to the specific terms or conditions offered by one lender compared to another.	<p>A lender offers terms and conditions that are more favourable, from a broker's perspective, than those offered by other lenders. There is potential for conflict if those more favourable terms are seen to have influenced your recommendation.</p> <p>Examples could include how a lender pays or calculates upfront commissions, the amount of a lender's commissions or a lender's clawback terms.</p>	<p>Ensure you can justify that your recommendation is in the customer's best interests and that any more favourable terms offered by that lender did not influence your recommendation.</p>

## 2.4 CHECKLIST: Preparing your business for the best interests duty

### Step 1: Understand your customers and their needs

Identify your customer mix and consider the specific needs of your core customer segments i.e. first homebuyers, experienced investors, credit impaired.

Ensure you have a range of lender accreditations that is representative of what is available in the market to assist your customer mix.

Add lender accreditations where you see gaps in what you can offer your customers.

Ensure your lender accreditations page in Mercury accurately reflects the accreditations you hold. Remember this data populates your Credit Guide.

Stay up to date with lender products and policy updates, and update your accreditations in line with market changes.

### Step 2: Update your systems, processes and documentation

Review your record keeping processes to enable efficient BID compliance.

Incorporate the education of customers into your customer interactions by sharing details of the loan application process and the three steps you will follow to comply with BID (gather information, make an individual assessment and present information and recommendations), ensuring these interactions are documented.

Review the documentation and standard emails you send to your customers to ensure your communication is in line with BID.

Review your website, advertising material and social media pages (personal and business) to ensure all content is in line with BID.

Confirm all team members in your business understand BID requirements.

If you are mentoring brokers, update your training and file review process in line with BID requirements.

### Step 3: Managing any conflicts of interest

Create a conflict of interest policy to manage any conflicts.

Implement systems and processes to identify any actual and perceived conflicts of interest.

Implement a register of conflicts of interest to ensure proper records are maintained.

Review your business relationships and make necessary adjustments aligned with BID requirements.

**Find out more in section 2.3 Understanding the conflict priority rule**



#### Connective tool

Connect with lenders and get the latest product and policy updates as part of the Connective Learning and Development program. For details, click here



#### Connective tool

Use the best interests duty workflow in Mercury Nexus to help you stay compliant.



#### **Connective tool**

If you'd like us to support your business to become BID ready, talk to your Connective Broker Support Manager or [Compliance Support Manager](#).

### **Step 4: Conflicted remuneration**

Ensure you record conflicted remuneration payments you are paying or receiving.

Ensure you have systems and processes in place so you or your associates don't receive conflicted payments.

Implement systems and processes to disclose permitted remuneration to your customers.

Implement systems and processes to ensure any permitted remuneration does not adversely impact your customers.

**Find out more in section 4. Understanding conflicted remuneration**

### **Step 5: Monitoring and oversight for ACL holders**

Make sure that you and any brokers within your organisation are aware of all BID requirements.

Update your file review process to align with BID requirements.

Put a process in place to manage your representatives if they breach BID.

Consider amendments to your employment agreements held with agents, representatives, and contractors to ensure your agreements are BID compliant.

### **Step 6: Keeping up with BID – it's not a one-time review**

Undertake ongoing training with Connective, lenders and your industry body to ensure you understand your obligations.

Review your lender accreditations on a periodic basis.

When you enter new referral relationships, consider conflicts of interest.

Review your conflicts of interest policy on a regular basis (minimum annually).

Review your advertising material on a regular basis and think about how this could be perceived by your customers.



# 3

## A step by step guide to acting in your customers' best interests

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There are three steps to ensuring mortgage brokers meet their BID obligations. At each step you must give evidence of your process and document your customer interactions.

### 3.1 Three 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 customer**

**Step 2: Make an individual assessment**

**Step 3: Present information and recommendations**



## 3.2 Step 1: Gather information about the customer

Educating your customer and documenting your customer interactions are important steps to comply with BID.

### BID ready tip

If you cannot act in your customers' best interests you must not provide credit assistance.

1

Use Connective's Needs Analysis as a comprehensive checklist to document your customer's needs and objectives

2

Find out what your customer wants to achieve, the reasons for obtaining credit and what loan features are important

3

Document the customer's financial situation and take reasonable steps to verify it

4

Identify any conflicts of interest and prioritise the customer's interests in all cases

5

Take reasonable steps to verify customer information and make further enquiries if it is incomplete or inaccurate

### 3.2.1 Best practice note taking

Detailed notes provide evidence that you've complied with BID. Best practice notes include:

- ✓ a timeline of the opportunity, or a narrative summary including actions taken and records of relevant customer or third party conversations i.e. accountants, legal representatives, lenders
- ✓ a record of the products reviewed, investigated and recommended
- ✓ a record of what was agreed and why; and in some situations, the reasons why a product was not recommended
- ✓ evidence of you acting in the customer's best interests, including records of efforts made to educate the customer such as emails containing customer fact sheets
- ✓ factual evidence that includes the customer's exact words where possible.

[Click here for examples of best practice notes.](#)

**Find out more in section 2.1 Educating and engaging your customers**



**Daniel Oh**

Group Legal Counsel  
Connective

*Be inquisitive when you're obtaining information from your customers. Don't just accept information at face value. If something doesn't seem right, ask questions, always document the response and then ask your customers to verify what you've understood via email.*

### 3.3 Step 2: Make an individual assessment

There's no one-size-fits-all product or approach. You must assess each customer individually.

- ✓ Assess each customer on their individual facts, circumstances, preferences and objectives in order to determine what is in their best interests.
- ✓ Consider a range of relevant products and identify the options that meet the customer's goals and objectives.
- ✓ Take all relevant factors into consideration, including value and benefits to the customer, when determining whether a recommended product is in their best interests.
- ✓ Consider your customer's priorities and preferences for products or credit providers, including preferences for the price of the loan, loan features and preferences relating to the level of service of the credit provider.
- ✓ Understand the customer's personal circumstances and financial situation to the extent that this could impact the suitability of different products.
- ✓ Be sure you have access to products that meet the customer's needs, objectives, preferences and priorities.
- ✓ Consider if you have the expertise to make a recommendation that meets the customer's needs, objectives, preferences and priorities.



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*In order to comply with BID, you must ensure that you're assessing the client's unique situation and circumstances. At this point, you need to decide if you can provide credit assistance and comply with BID. If you don't think you can, then refer them on or politely decline. Protect yourself.*

Under responsible lending, you must also determine:

- ✓ that the loan is not unsuitable
- ✓ the customer can comply with the financial commitment without substantial hardship
- ✓ the loan meets the customer's needs and requirements.

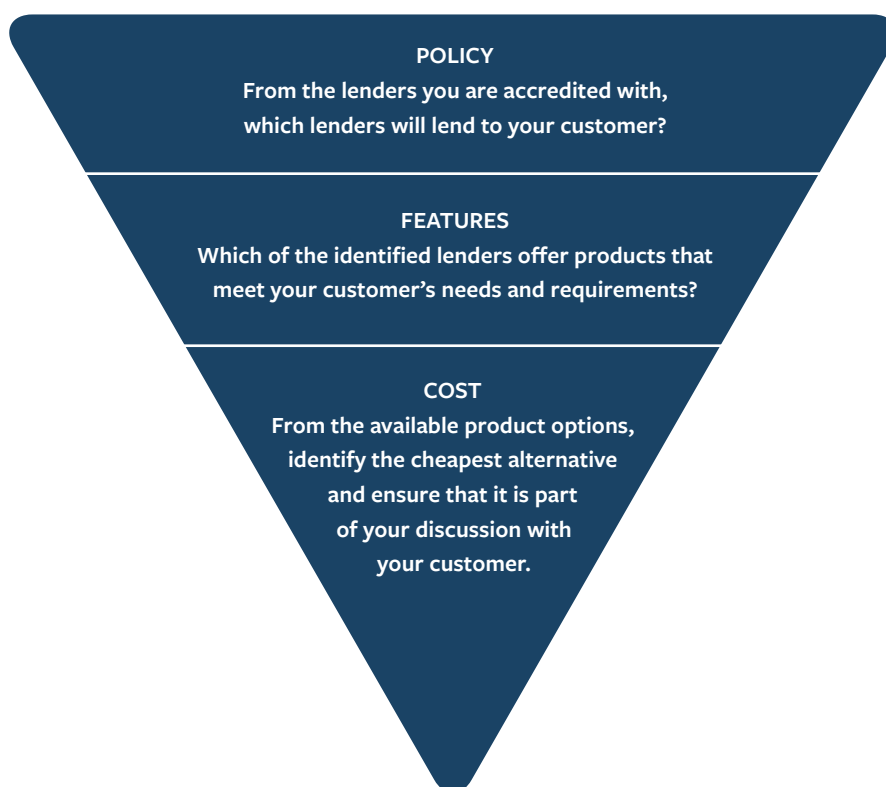
Recently the Federal Treasurer announced proposed changes to simplify credit laws, including the removal of responsible lending obligations.

Any change will not kick in until March 2021 at the earliest, so you must still meet your responsible lending obligations in the meantime.

### 3.3.1 The priority pyramid: where does cost fit in?

As a rule, ASIC says cost should be prioritised. But you should also consider whether the benefits of other features outweigh the importance of cost.

Use the priority pyramid below to help you make these decisions.



Depending on the circumstances, you will need to ensure that:

- ✓ the products presented to the customer include the “cheapest” option
- ✓ in the event that you do not recommend the cheapest option, explain your rationale and why the recommended option is in the customer's best interests
- ✓ you retain notes and correspondence supporting your decision and record these conversations with your customer.



## What is the “cheapest” loan?

There isn't one correct answer. Cost includes:

- ✓ interest rate, fees and charges, including establishment fees and package fees, and any cashback offer
- ✓ features such as offset accounts and redraw facilities can also form part of the overall cost assessment, depending on your customer's circumstances
- ✓ certain promotional offers, such as reward points, are not easily quantifiable, so consider these factors in your decision-making process.

Ultimately, whichever method you use to calculate the cheapest option needs to be objective and justified. Be careful not to have a “one-size-fits-all” approach. You may need to vary the way you calculate cost depending on a customer's particular circumstances.

To protect your business, you should discuss your method with your customer and ensure you retain adequate notes.

### New purchase

It may be as simple as identifying the option with the lowest rate based on the product comparison in Mercury, as well as the one with the lowest total cost i.e. interest rate plus fees.

### Refinance

You may need to calculate the cost of the existing loan(s) and compare it to the total cost of the new loan, including any refinancing cost over an equivalent term.

### 3.3.2 Other loan features

Whilst cost is a key consideration, there may be other features your customer values.

#### Important tip: What if the customer doesn't want the loan you recommended?

Your customer may prefer a certain lender's product over the product you've determined is in their best interests. In this case, you should at least present more than one option, including the cheapest option, to your customer. If they still prefer an alternative to your recommendation, retain adequate notes reflecting these interactions and your customer's choice.

Offset accounts

Redraw facilities

Packages containing other products

Approval times

It's critical that you understand what is important to your customer in the information gathering stage and, where possible, rank the priority of each identified feature.

Exercise judgement in considering the relevance of each product feature when considering your customer's individual circumstances. Where necessary, you may need to educate your customer to ensure they understand the credit products you're recommending and how they meet their needs and requirements.



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*It's easy for a customer to select product features, but do they really understand the pros and cons of the features they've chosen? Educate your customer using product fact sheets, so you can have an informed discussion and be confident that you're acting in their best interests.*

### 3.3.3 Packaged products

BID also applies to packaged credit products, i.e. credit cards, personal loans or other credit products that are bundled with a mortgage.

ASIC did this to ensure that customers would not receive additional products or packages that did not meet their needs, objectives and best interests.

When recommending a package to your customer, you need to identify:

- ✓ how each product within the package meets your customer's needs, objectives, priorities and preferences
- ✓ why recommending that product as part of a package would be in your customer's best interests
- ✓ how the package you're recommending compares to similar available packages and standalone home loans without packaged credit products
- ✓ the key drivers for why you are providing credit assistance to your customer and how your recommendation aligns with their best interests.

### 3.4 Step 3: Present information and make recommendations

1

**Present** your recommendations to the customer, showing all of the options you considered, including the type of loan, lender and costs.

2

**Explain** and document why you chose the products and how they align with the customer's circumstances and best interests.

3

**Educate** and equip the customer with all the information they need to make informed decisions.

#### BID ready tip

If the number of options available to a particular customer is limited, make sure this is documented in your notes and explained to them.



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*If your customer decides to choose a different product than the one you recommended, reiterate your reasoning. If that doesn't work, note their decision and move on. What matters with all of this is that customers are making fully informed decisions about their money.*

## 3.5 Comparing responsible lending and the best interests duty

ASIC has stated that best interests duty is a higher obligation than responsible lending, as shown by their expectations for compliance.

Responsible lending obligations	Best interests duty obligations
<ul style="list-style-type: none"><li>✓ Provide a preliminary assessment to the customer upon request outlining their requirements and objectives, financial position and confirmation that the credit assistance is 'not unsuitable'.</li></ul>	<ul style="list-style-type: none"><li>✓ Have relevant conversations with the customer.</li><li>✓ Show how you acted in the customer's best interests.</li><li>✓ Provide options and recommendations.</li><li>✓ Show how your recommendations reflected a range of options that aligned with the customer's circumstances.</li><li>✓ Provide reasons for the recommendations and how these were in the customer's best interests.</li><li>✓ Show how you educated and equipped the customer to make an informed decision, including whether to apply for the product recommended.</li><li>✓ If any potential conflicts were identified, document the steps you took to prioritise the customer's interests.</li></ul>



### Connective tool

Ask your customer to confirm what you've discussed and their decision via email and save it to their record in your CRM. Mercury makes this easy!

Any proposed changes to responsible lending obligations will not be introduced prior to March 2021 at the earliest, so you must still meet your responsible lending obligations in the meantime.



## 3.6 CHECKLIST: Best interests duty compliant customer interactions

Refer to this checklist throughout your customer interactions to ensure you are acting in their best interests.

### 1. Understand your customer

- Provide the customer with your Credit Guide
- Send the Needs Analysis to your customer
- Understand customer's objectives and requirements (long and short term)
- Understand customer's financial situation
- Understand customer's priorities and preferences for loan product features
- Complete the identification process
- Document important points from the interview process including information that was not shared in the Needs Analysis
- Educate the customer by sending relevant fact sheets from Mercury

### 2. Conflicts of interest

- Identify conflicts of interest
- Decide if you can prioritise the customer's interests and support them with credit assistance or not
- Advise your client of your decision

### 3. Obtain supporting documents

- Income documents
- Transaction account statements showing salary, liabilities and living expenses
- Purpose documentation (purchase contract, savings history, refinance statements, construction documents)
- Make notes regarding any verification undertaken on the documents i.e. income verification phone calls

### 4. Do your research

- Use the product calculator in Mercury to compare loan options
- Discuss scenarios with lender BDMs
- Reference lender policy and turnaround time notifications
- Record your research in Mercury

### 5. Choose the product

- Match to the customer's needs and objectives, their product preferences, and priorities
- Take cost of the life of the loan into consideration
- Complete the preliminary assessment

## BID ready tip

The most important thing about BID is educating your customer and recording the steps you have taken to make an appropriate recommendation that's in the customer's best interests. Your notes and records are key evidence of the customer's journey!

### 6. Present the recommendations to your customer and document these interactions

Include the lowest cost option or where this is not relevant, document and reference the reasons why – i.e. outside of lender policy, or lender could not meet the customer's settlement timeframe

Explain the reasons for the lenders you have recommended

Explain the reasons for the products selected and how these relate to their long and short term objectives and product preferences

Make any notes about the inclusions or reasons why lenders were excluded

Allow the customer to make an informed decision on which lender they wish to proceed with

Document all conversations with the customer in how you educated them through this process and why the final choice of lender was selected

### 7. Prepare the application

Provide the customer with the credit proposal disclosure and remember to get this signed

Have the customer sign the required lender documentation

### 8. Lodge the application

Keep the customer informed throughout the process, including when it was lodged and expected approval time

Record any notes and upload all emails, including lender notifications

### 9. Approval

Inform the customer when the loan is approved and the next steps (lender loan offer / contract)

Ensure the customer is aware of the contract terms and conditions, and where possible, has obtained independent legal advice

Make any notes from meetings with the customer where the loan contracts were discussed and remember not to give legal advice

### 10. Post-settlement

Ensure you remain engaged with your customers and diarise ongoing communication and home loan health check-ups

# 4

## Understanding conflicted remuneration

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Conflicted remuneration is a reward structure where a licensee or its representatives receive additional perks and benefits (monetary or non-monetary) that could influence the loan products they recommend or credit advice they provide to customers.

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

Employers, credit providers and mortgage intermediaries will be prohibited from giving conflicted remuneration to mortgage brokers or mortgage intermediaries.



## 4.1 Examples of conflicted remuneration

The Combined Industry Forum (CIF) has already addressed and reformed the majority of conflicted remuneration, with most lenders quickly implementing these recommendations by the start of 2019, so the following examples are unlikely to have much bearing on mortgage brokers today.

**Volume-based benefits:** When a mortgage broker earns payment or non-monetary benefits based on the volume of home loans sold or the number of settlements with a particular lender.

**Soft-dollar benefits:** When a mortgage broker receives benefits other than commissions, such as travel, hospitality or exclusive tickets, for meeting a certain threshold with a particular lender.

**Campaign-based benefits:** When a mortgage broker earns a higher rate of upfront and trail commission from a lender during a limited period.

**Broker clubs (or loyalty programs):** When a mortgage broker receives tiered service, including faster response and turnaround times, based on how much business they direct to a lender.

### BID ready tip

Mortgage brokers and mortgage intermediaries need to ensure that any benefits they receive are transparent and do not adversely impact their customers.

## 4.2 Exemptions from the conflicted remuneration ban

Benefits that meet the following criteria are not considered ‘conflicted remuneration’:

- ✓ the benefit is given by the customer i.e. fees for service
- ✓ the benefit given in relation to mortgage broking is not volume-based or a campaign-based benefit and is calculated on the drawn amount of the loan and complies with clawback requirements i.e. upfront and trail commission
- ✓ non-monetary benefits which are infrequent and less than \$300
- ✓ non-monetary benefits in the form of IT support, education and training.

### BID ready tip

There are strict anti-avoidance provisions in the new laws so introducing a fee structure with your customer that mimics the recovery of a clawback is also prohibited.

## 4.3 Clawback provisions

Under the new regulations, a lender cannot clawback commission from aggregators and mortgage brokers after more than two years from the first day the credit contract was drawn by the customer. In addition, mortgage brokers are no longer permitted to recover a commission clawback from their customer.

The proposed changes to clawback arrangements will take effect from 1 January 2021.

Where permitted under existing arrangements, you will still be able to recover commission clawback from your customer if the credit contract is drawn down before 1 January 2021 even if the commission is clawed back after that date.

# 5

## Best interests duty in practice

The following fictitious scenario shows how the best interests duty applies in practice.

Jen and Tim are first homebuyers who've been referred to you by your sister Leah, their real estate agent. Jen and Tim have expressed interest in a property Leah has listed for auction but are nervous about bidding as they are new to the property market.

### Step 1: Gather information about your customer

You send Jen and Tim a copy of your Credit Guide and a Needs Analysis to be completed prior to your meeting.

Their Needs Analysis responses inform you that Jen and Tim:

- ✓ are concerned about rising interest rates
- ✓ want a loan with a variable interest rate
- ✓ want an offset account.



You notice there is a contradiction between wanting a variable interest rate and being concerned about rising interest rates. This will need to be clarified with the customer so you understand what they want to achieve and their priorities.

At your meeting with Jen and Tim, you discuss the following:

- ✓ the pros and cons of both variable and fixed rates
- ✓ their risk appetite
- ✓ the benefits of a split loan with the flexibility of an offset account with a fixed portion
- ✓ their income position and amount spent on living expenses
- ✓ offset accounts that are part of a packaged loan product, which also includes a credit card.

You are aware that products with a package and offset account usually have higher interest rates and fees so you further investigate whether Jen and Tim have sufficient discretionary income in order for the offset account to be beneficial.

After the meeting, you send a follow-up email to Jen and Tim outlining the discussion, including your relationship with Leah and how your priority is Jen and Tim.

**Find out more in section 3.2 Gather information about the customer**

**Find out more in section 2.3 Understanding the conflict priority rule**

## Step 2: Make an individual assessment

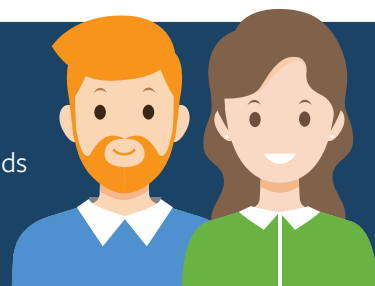
Now that you have a more in-depth understanding of Jen and Tim's situation and what they want to achieve, you can set about identifying which lenders will suit their requirements.

Of the 25 lenders with whom you hold accreditation, there are eight lenders who offer offset account options. From your discussion with Jen and Tim, you know they are first-homebuyers and want to bid at auction, but don't want to do so without a pre-approval.

Six of the eight possible lenders can meet the required timeframe and two cannot. After reviewing their respective lending policies, you identify that two lenders require evidence of genuine savings which Jen and Tim don't have, given they have been renting for five years. While they have a small deposit, the majority of their funds are from a recently received inheritance.

This leaves four lenders who can:

- ✓ meet the timeframe for pre-approval
- ✓ accept the equity of inheritance over saved funds
- ✓ match the loan features that Jen and Tim have prioritised.



You conduct a product comparison on the remaining four lenders and send this through to Jen and Tim with a request for another meeting to discuss your recommendation.

Ahead of your meeting with Jen and Tim, in addition to the product comparison, you email Jen and Tim the following for their consideration:

- ✓ a quick guide on how to read the product comparison since you know Jen and Tim are first homebuyers and not financially savvy
- ✓ details about one lender in the product comparison that is a regional bank to ensure they're aware of this
- ✓ fact sheets on split loans and offset accounts, and the offset calculations you completed.

**Find out more in section 3.3 Make an individual assessment.**

### Step 3: Present information and recommendations

At your next meeting with Jen and Tim, you discuss the product comparison chart that you emailed them, further explaining the difference in the lender options, including the rate, total interest over the life of the loan, and the lenders' other non-comparison features, such as internet banking.

As Jen and Tim require an offset account, you reiterate that options with this feature usually have higher interest rates and/or fees and that they need to maintain a certain monthly balance in the offset account to ensure it is in their best interests.



You reiterate how these lenders meet the objectives they outlined to you during your first meeting.

**Find out more in section 3.4 Present information and make recommendations.**



## Exploring options and identifying the best option

As you go through the product comparison with Jen and Tim, you explain:

**Lender 1** has the cheapest loan rate by 0.05% but is a regional bank.

**Lender 2** has the cheapest overall loan as the annual fee is considerably less than Lender 1 but has limited features and no internet banking app.

**Lender 3** is more expensive than Lenders 1 and 2 and does not have a branch network, but has the best internet banking app and a credit card linked to the offset account which accrues frequent flyer points.

**Lender 4** is the most expensive, but is a well-known bank with an extensive branch network.

After weighing up the pros and cons of each lender, Jen and Tim decide on Lender 3 because it has the best internet banking app and convenience is important to them. Jen and Tim are not concerned about the lack of branch network as everything they do is on their phones. They also love the credit card linked to frequent flyer points.

Returning to the office, you make notes in Mercury about why they landed on Lender 3 and why the cheapest option (Lender 2) was not selected.

In our scenario, you do not need to compare the credit card that is offered by Lender 3 with other equivalent standalone credit cards. The decision for selecting Lender 3 was made by Jen and Tim for other reasons, and on this basis, you are confident that Lender 3 is in their best interests.

As Leah is your sister, you do not pay her a referral fee. However, as it is a referral relationship, there is a potential conflict of interest that needs to be disclosed as early as possible to Jen and Tim to ensure they understand the relationship and if there is a perceived conflict.

To comply with the conflict priority rule, you need to ensure that whatever loan you recommend would be a loan another mortgage broker in your same position, but without the potential conflict, would also have recommended.

**Find out more in section 3.3.3 Packaged products**

**Find out more in section 3.2.1 Best practice note taking**

**Find out more in section 4. Understanding conflicted remuneration**

# 6

## Resources

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### Financial Sector Reform

Hayne Royal Commission Response - Protecting Consumers (2019 Measures) Act 2020 (Cth) legislation introducing the best interest duty, the conflict priority rule and the ban on payment/receipt of conflicted remuneration.

Legislation

Explanatory Memoranda

### Financial Sector Reform

Hayne Royal Commission Response – Protecting Consumers (Mortgage Brokers) Regulations 2020 (Cth).

Regulations

Explanatory Statement

### Regulatory Guidance 273 Mortgage Brokers

Best Interest Duty (RG273) issued by ASIC which outlines its view of how mortgage brokers can comply with the best interests duty obligations.

Regulatory Guides

Additional resources are also available on the [MFAA](#) and [FBAA](#) websites for members of each industry body.



# In summary

We believe the best interests duty, conflict priority rule and changes to conflicted remuneration will raise the bar on the industry's culture, conduct and standards, making us a stronger and more successful industry as a result.

As the largest aggregator in Australia, we played a significant role in advocating for mortgage brokers and shaping how BID would be determined and implemented to ensure it would create the right outcomes for customers without negatively impacting mortgage brokers' livelihoods or the sustainability of the industry.

While new regulatory implications and compliance measures are always daunting, we believe that if mortgage brokers follow the steps outlined in this eBook, they will be prepared to meet their compliance requirements.

Follow the checklists above to get your systems and processes in place for an easy transition. Talk to your new and existing customers about the service you provide – and how you are legally required to serve their best interests and educate them so they make an informed decision.

With a growing market share every year, the broking industry has a lot to be proud of— this is just another step towards elevating and improving the industry we're passionate about so we can empower our customers as they make the largest financial decision of their lives.

## Mark Haron

Executive Director  
Connective



# Do you need help getting your business **BID ready?**

Contact the Connective Compliance Team today.



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