



Adviser Conduct Policy

Entity: Integrity Financial Planners Pty Ltd **(IFP)**

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AFSL: 225051

Template Administration History – Version Controls			
Action (e.g. creation)	Date	Version Number	Description/Reason (e.g. new precedent)
Creation	01/08/2021	1.0	New policy
Review	01/06/2022	1.1	<ul style="list-style-type: none"> *Minor corrections to grammar *Update reference to “FASEA” to “Financial Planners and Advisers” or “ASIC” as appropriate *Update “Fee Disclosure policy” to “Ongoing Service, Renewal Notice and FDS Policy” * 4.1 Table item “Providing ongoing service – FDS & Ongoing Consent”, remove statement “Note that during the transitional period (2021/2022 FY) the FDS must be issued within 1 business day of the end of the FDS period.” * 6.1 (c) sentence “This is because the licensee receives insurance commissions on behalf of some representatives” add “which are not rebated in full to the relevant clients.” * 6.2 (a) Replace “provisional relevant provider” with “provisional financial adviser / planner” * 7.4 (b) and (c) – clarify that it is highly recommended by IFP that the adviser issues an ROA to clients * 9.2 STEP 7 include: “This can be where a client provides an adviser instruction on what they want (e.g. set up or continue to hold an SMSF). However, the adviser needs to assess whether that action is in the best interest of the client, regardless of the client’s request.”

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Intellectual Property and disclaimer

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Version 1.1 – June 2022**References:***Corporations Act (Cth) 2001*

- REGULATORY GUIDE 175: Licensing: Financial product advisers—Conduct and disclosure
- REGULATORY GUIDE 36: Licensing: Financial product advice and dealing
- REGULATORY GUIDE 244: Giving information, general advice and scaled advice
- Report 562: Financial advice: Vertically integrated institutions and conflicts of interest
- Financial Planners and Advisers Code of Ethics 2019

1 Background and purpose of document

1.1 Background

- (a) Under s912A(1) of the Corporations Act (**Act**), an Australian financial services Licensee (**AFSL**) is required to (amongst other requirements):
 - (i) do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly;
 - (ii) comply with the financial services laws;
 - (iii) take reasonable steps to ensure that its representatives comply with the financial services laws;
 - (iv) ensure that its representatives are adequately trained and are competent, to provide those financial services; and
 - (v) comply with the conditions on the licence.
- (b) An AFSL must also take reasonable steps to ensure that its representatives comply with sections 961B, 961G, 961H and 961J (**Best Interests Obligations**).

1.2 Purpose and framework

- (a) This policy (**Policy**), in conjunction with other policies listed below, has been developed by Integrity Financial Planners Pty Ltd (**Licensee**) for the purposes of enabling the Licensee to meet its obligations under the Act and ASIC guidance.
- (b) The other relevant policies include:
 - (i) Representative appointment and termination policy (**Appointment and termination policy**);
 - (ii) Conflict of interests' policy (Adviser) (**Adviser conflicts policy**);
 - (iii) Ongoing Service, renewal notice and FDS policy (**FDS policy**);
 - (iv) Pre-vet policy (**Pre-vet Policy**);
 - (v) Breach reporting and consequences management policy (**Breach reporting policy**); and
 - (vi) Monitoring and supervision policy (**Monitoring and supervision policy**).
 - (vii) Cyber Security
 - (viii) AML / CTF Policy

1.3 Responsibility

A Responsible Manager (or a delegate with appropriate experience and seniority) will be responsible for:

- (a) ensuring that the representatives understand the requirements of this Policy;
- (b) monitoring compliance with this Policy via its Monitoring and supervision policy; and
- (c) reviewing this Policy on not less than an annual basis (unless more immediate updates are required due to legislative or regulatory change).

2 Giving advice: Personal advice vs general advice vs factual information

2.1 Factual information or financial product advice?

- (a) Factual information is objectively ascertainable information, the truth or accuracy of which cannot reasonably be questioned. Factual information would not ordinarily be considered by ASIC to be financial product advice if you:
 - (i) clarify at the outset that you are giving the client factual information where there is a reasonable likelihood of doubt; and
 - (ii) the information is not intended to imply any recommendation or opinion about a financial product.
- (b) Financial product advice generally involves a qualitative judgement about or an evaluation, assessment or comparison of some or all of the features of a financial product (RG 36.18).
- (c) If a communication is a **recommendation** or a **statement of opinion**, or a report of either of these things, that **is intended to, or can reasonably be regarded as being intended to, influence a client in making a decision** about a particular financial product or class of financial product (or an interest in either of these), it is financial product advice (s766B(1)).
- (d) Financial product advice can be personal advice or general advice, depending on the nature of the advice.

2.2 Financial product advice: General advice or personal advice?

- (a) Personal advice is financial product advice given or directed to a person (including by electronic means) in circumstances where:
 - (i) the person giving or directing the advice has considered one or more of the client's objectives, financial situation and needs; or
 - (ii) a reasonable person might expect the person giving or directing the advice to have considered one or more of these matters (s766B(3)).
- (b) All other financial product advice is general advice: s766B(4).
- (c) When determining whether a particular financial product advice is personal or general, ASIC will have regard to the following:
 - (i) Did the person giving the advice (e.g. the adviser) offer to provide personal advice (e.g. in an FSG or other material given to the client before the advice was provided)?
 - (ii) Did the person giving the advice clearly explain whether they were providing personal advice or general advice to the client?
 - (iii) Did the client request personal advice (including requesting advice about what decision they should make)?
 - (iv) Did the person giving the advice request information about the client's relevant circumstances?
 - (v) Was the advice directed towards a named client or readily identifiable client or clients?

- (vi) Does the advice contain, or was it accompanied by, a general advice warning made for the purposes of s949A?
 - (vii) Does the advice appear on its face to be tailored to the client's relevant circumstances (e.g. does it refer to information or assumptions specific to the client)?
- (d) If the person giving the advice receives or possesses information about the client's relevant circumstances, this does not by itself mean that any advice given to that client is necessarily personal advice. This is because the test for whether financial product advice is personal advice or general advice is not dependent on whether the person giving the advice merely possesses information about the client's relevant circumstances. Integrity's position is that General Advice does not apply to an existing client unless it is in a seminar setting.
- (e) Whether such advice is personal advice will generally depend on whether the person giving the advice has considered (or whether a reasonable person might expect them to have considered) that information in providing the advice for example, whether the person giving the advice has considered one or more of the client's objectives, financial situation and needs, or whether a reasonable person would expect them to have considered these: s766B(3).

For examples on the above, please refer to pages 37 onwards of ASIC RG 244. (See appendix A for the link)

2.3 What must you do when you give personal advice?

- (a) If an adviser gives personal advice to a retail client, they must provide the client with a statement of advice (SOA) or a record of advice (ROA) at the time when the personal advice is provided.
- (b) The adviser must also comply with the best interests' obligations when providing personal advice.

2.4 What must you do when you give general advice?

If an adviser gives general advice, the adviser must warn the client that:

- (a) the advice has been prepared without considering their objectives, financial situation or needs;
- (b) the client should, therefore, consider the appropriateness of the advice, considering their own objectives, financial situation or needs, before acting on the advice; and
- (c) if the advice relates to the acquisition, or possible acquisition, of a particular financial product, the client should obtain a Product Disclosure Statement (PDS) (if required) relating to the product and consider the PDS before making any decision about whether to acquire the product: s949A(2).

The adviser should have a record of the discussion and detail the warnings that were specifically provided to the client.

2.5 Support staff giving information

- (a) Support staff are not authorised to give financial product advice (either general or personal).
- (b) Accidental advice may be given where support staff:

- (i) gives their opinion about a product (irrespective of whether the opinion favours or disapproves of a product); or
 - (ii) states that in general a particular type of product would be suitable for a client or a particular type of client;
- (c) They are only able to provide factual information to clients or perform the role of 'clerks or cashiers' (see further explanation below on the clerks or cashier's exemption). Advisers who employ support staff who are not authorised to provide advice must take care to ensure the support staff adhere to this to avoid the clients having the opinion that the staff member has provided advice whether accidental or not.

2.6 The role performed by clerks or cashiers

- (a) The law provides exemptions for those who provide services of a kind ordinarily done by clerks and cashiers. People who provide these services are not providing a financial service and therefore do not need to be authorised to do so.
- (b) Examples of some of the activities they can perform are set out below (per RG 36.35):
 - (i) posting, handing out, or otherwise distributing or displaying, documents such as prospectuses, PDSs, or FSGs;
 - (ii) answering routine questions from clients by giving ***factual information***, such as minimum investment amounts of funds accepted, whether a particular offer is still open, or the nature of investments made by a specific trust;
 - (iii) collecting payments (e.g. subscription money) and issuing receipts;
 - (iv) performing the routine or administrative function of assisting clients to complete application forms and send completed application forms to the relevant product issuer; or
 - (v) performing other routine or administrative functions that do not involve a judgement about what financial products, or classes of financial products, are appropriate or should be considered by a client.

3 Retail client vs wholesale client

3.1 Retail client vs wholesale client

- (a) The law makes a clear distinction between retail clients and wholesale clients. The purpose is to ensure that those who qualify as retail clients receive a certain level of protection via specific conduct and disclosure requirements that advisers must comply with.
- (b) Wholesale clients do not have the same level of protection because the assumption is those who qualify as wholesale clients have a certain level of skills, knowledge and experience such that a higher level of protection is not required for them.
- (c) For financial advisers, the distinction is therefore important because different obligations apply when financial services are provided to retail clients versus wholesale clients.

The law requires that all clients must be treated as retail clients unless the client qualifies as a wholesale client. The Licensee has a separate wholesale client policy as to set out its policy in relation to classification and treatment of clients who may qualify as wholesale clients. **For further detail about how to classify and deal with Wholesale or Sophisticated Clients, please refer to the IFP Wholesale Client Policy**

- (d) In general, if you provide advice to a client about a superannuation product or an RSA product, the client **must** be treated as a retail client. In some circumstances, where the client meets the Wholesale definition and wishes to be advised on a SMSF, the wholesale or sophisticated exemption may apply.

4 Conduct and disclosure requirements when you provide financial services to retail clients

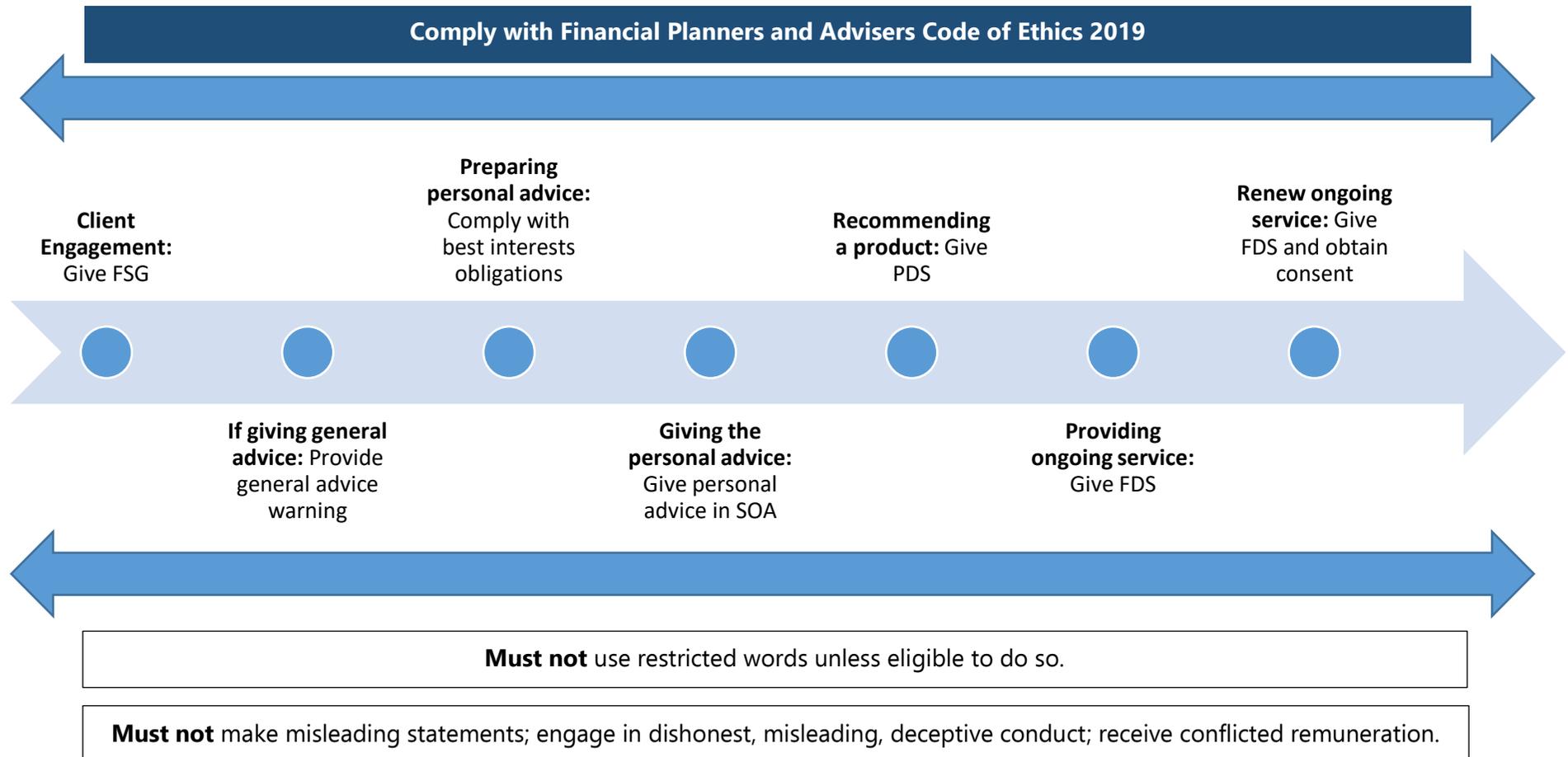
4.1 Summary of conduct and disclosure requirements for retail clients

	What must be done?	When must it be done by?
Engagement	Give the client an FSG	As soon as practicable after it becomes apparent that financial services will be/are likely to be provided to the client.
General advice	General advice warning	Before or at the same time as when the general advice is provided to the client.
Personal advice - Preparing the advice	Comply with best interests' obligations	Throughout the entire personal advice process of providing personal advice to the client.
Personal advice - Communicating the advice	Give the client an SOA	At the same time as when the personal advice is provided to the client.
Personal advice - Product recommendations	Give the client a PDS for the relevant product	At the same time as when the product is recommended to the client.
Acting as an adviser - Use of restricted words	Must not use restricted words unless eligible to do so (eg. Independent)	Ongoing obligation
Acting as an adviser - conduct	Must not make misleading statements and engage in dishonest, misleading or deceptive conduct	Ongoing obligation
Acting as an adviser - conduct	Comply with Financial Planners and Advisers Code of Ethics 2019	Ongoing obligation
Providing ongoing service – FDS & Ongoing Consent	Comply with FDS requirements	Annually within 60 days of the annual disclosure day for the retail client. Consent for ongoing arrangements must be obtained by the client within 120 days after the anniversary date.
Revenue for ongoing service	Must not receive conflicted remuneration	Ongoing obligation

5 Conduct and disclosure requirements when you provide financial services to retail clients

5.1 Summary of conduct and disclosure requirements for retail clients

When an adviser provides a financial service to a retail client the following conduct and disclosure obligations will apply:



6 Use of restricted words

6.1 Must not use restricted words: 'independent', 'impartial', 'unbiased'

- (a) Section 923A of the Act restricts a person from using words and expressions, such as **'independent'**, **'impartial'** and **'unbiased'**, in relation to a financial services business or in the provision of a financial service unless the following conditions are met:
- (i) the person (or anyone providing a financial service on their behalf) does not receive:
 - (A) commissions (apart from insurance commissions that are rebated in full);
 - (B) other gifts or benefits from product issuers that may reasonably be expected to influence that person;
 - (ii) the person operates free from direct or indirect restrictions relating to the financial products in respect of which they provide financial services; and
 - (iii) the person is free from conflicts of interest that might arise from any relationships with product issuers and which might reasonably be expected to influence the person.
- (b) ASIC also considers that words such as **'independently owned'**, **'non-aligned'** and **'non institutionally owned'**, and other similar words or expressions, are also restricted under s923A, and can only be used if the conditions in s923A are satisfied. This is because ASIC considers these words and expressions are 'of like import' to the words specified in s923A(5)(a).
- (c) Instead, ASIC considers that some examples of terms that may be acceptable under s923A, even if the conditions are not satisfied, are:
- (i) 'locally owned';
 - (ii) 'privately owned'; and
 - (iii) 'boutique licensee'.

Please note that no representatives of Integrity can refer to themselves as 'independent', 'impartial' and 'unbiased' or 'independently owned', 'non-aligned' and 'non institutionally owned'. This is because the licensee receives insurance commissions on behalf of some representatives, which are not rebated in full to the relevant clients.

6.2 Use the term 'financial planner' or 'financial adviser'

A person who is not a relevant provider (i.e. an existing adviser between 1 January 2016 and 1 January 2019, or an adviser who has met the relevant education and qualification requirements) cannot use restricted terms such as 'financial adviser' and 'financial planner'. Specifically, the following persons cannot refer to themselves as a 'financial planner' or a 'financial adviser':

- (a) provisional financial adviser / planner (i.e. those undertaking their professional year); and
- (b) limited-service time-sharing advisers (i.e. time-share advisers that have not met the training requirements).

7 Giving an SOA vs giving a ROA

7.1 Situations where you do not need give an SOA

An SOA is **not** required where the advice:

- (a) is provided to a client who is not a retail client;
- (b) relates to any of the following (but only if the information about interests, associations and costs are provided):
 - (i) a basic deposit / non basic deposit product (reg 7.7.10AE);
 - (ii) traveller's cheques (reg 7.7.10);
 - (iii) a cash management trust interest;
 - (iv) a motor vehicle insurance product;
 - (v) a home building insurance product;
 - (vi) a home contents insurance product;
 - (vii) a personal and domestic property insurance product; or
 - (viii) a medical indemnity insurance product;
- (c) qualifies as a record of further advice (**ROA**);
- (d) relates to financial investments whose value does not exceed \$15,000 (calculated to include the total value of financial investments that would be committed to or disposed of if the client accepted the advice: reg 7.7.09A). Note that superannuation funds have been specifically excluded from this exemption.

7.2 When can an adviser give an ROA instead of an SOA?

- (a) An SOA does **not** need to be given where the advice can otherwise qualify as a ROA.
- (b) A piece of advice would qualify to be issued as an ROA if:
 - (i) the adviser has previously given the client an SOA setting out the client's relevant circumstances in relation to the advice (the 'previous advice'); **AND**
 - (ii) the client's relevant circumstances in the ROA (considering the client's objectives, financial situation and needs) are not significantly different from the client's relevant circumstances in relation to the previous advice; **AND**
 - (iii) the basis on which the further advice is given is not significantly different from the basis on which the previous advice was given.

7.3 Examples of when an ROA may be appropriate instead of an SOA

- (a) Examples of when an ROA may be appropriate are:
 - (i) An adviser reviews their client at an annual review and confirms client is on track to meeting goals and objectives and no changes are to be made to the existing portfolio;
 - (ii) You have previously made a recommendation for a particular level of cover on an insurance policy, but the insurance company declines cover, so you recommend a lower amount of cover, but all advice regarding the insurance product and structure remains unchanged;

- (iii) Client has surplus income and you advise to contribute to an existing investment/same portfolio;
- (iv) Client requests assistance with withdrawing funds to cover a minor expense and you recommend the investment option to withdraw the funds from;
- (v) Advice to increase or reduce exposure to an existing portfolio;
- (vi) A client asks for advice to invest \$10,000 into an investment outside of superannuation.

7.4 Giving an ROA when you recommend a client hold their existing investments

- (a) In many instances, particularly in the case of annual reviews, there may be no changes to the advice given in the earlier SOA. If that is the case and you advise the client to retain the financial products they currently hold, this **'recommendation' to 'hold' constitutes personal financial product advice** (because it is advice to hold the products). This view is confirmed by ASIC and by the Supreme Court of Queensland in Queensland Supreme Court decision in *McDonald v AMP Financial Planning Pty Ltd [2018] QSC 195*;
- (b) Accordingly, if you recommend a client to retain their existing product in the case of an annual review, or other similar situations, it is strongly recommended that an ROA be provided to the client. The exception to this provision is where you have recently joined the Licensee from a former AFSL and this is the first advice communication to your client/s as a representative of the Licensee. In this instance an SOA must be provided to the client unless an exemption has been provided from IFP;
- (c) If your service offering includes an annual review, then an ROA is also critical to demonstrate that the annual review service has been provided and IFP strongly recommends that a documented ROA be issued to the client/s.

8 Record keeping obligations

8.1 Licensee record keeping obligations in relation to the provision of personal advice

- (a) The Act was amended (with the insertion of a new s912G) by *Class Order [CO 14/923] Record-keeping obligations for Australian Financial Services Licensees when giving personal advice (Class Order)* to specifically set out the record-keeping requirements for AFSLs and its representatives who give personal advice to retail clients.
- (b) Specifically, the Licensee is required to ensure that records (including the SOA/ROA) are kept of the advice given. The Licensee must ensure that records of advice are kept for a period of at least seven years after the day the personal advice is provided to the client.
- (c) If the records are retained primarily by the adviser, the adviser is required to give access to these records to IFP during this period to enable the Licensee to produce these books and records if the Licensee is required to do so. **This obligation continues to apply** even if IFP ceases to be the AFSL of (authorising) the representative. The time frame may also be extended (i.e. greater than 7 years – see AFCA rules on time when a complaint can be made).
- (d) The above obligations are additional to the Licensee's other record keeping obligations as an AFSL.

8.2 Adviser record keeping obligations in relation to the provision of personal advice

- (a) An adviser who provides personal advice must keep records of the advice given, including copies of SOAs, for a period of at least seven years **after** the day the personal advice is provided to the client, unless the records have been given by the adviser to the Licensee.
- (b) By law, the adviser must give the advice records to the Licensee if the Licensee requests the records, provided that the request is made:
 - (i) in connection with the obligations imposed on the Licensee under Chapter 7 of the Act; and
 - (ii) within seven years after the day on which the personal advice is given to the client.
- (c) This legal obligation continues to apply even if the adviser ceases to be a representative of IFP during the period that the records are required to be given or kept.

8.3 File notes and record keeping for best interests' duty

- (a) The higher standards imposed by the best interests' duties mean there is an equivalently higher standard in documenting and file noting to prove that the best interests' duties are met. The Class Order specifically requires advisers and licensees to maintain records to demonstrate compliance with the best interests' duty.
- (b) The adviser must ensure they take comprehensive file notes during the advice process to demonstrate that they have met each of the safe harbour steps set out below. All file note material is required to be kept for a least seven years.
- (c) Effective file notes should be clear, concise, comprehensive and contemporaneous (around the same time). ASIC, AFCA and IFP regard contemporaneous file notes as notes that are made at the same point in time or shortly after the meeting / discussion took place. Documents created at the same time as the activity or advice

in question are ***usually*** given more weight (as evidence of those events) than later recollections of what was said or done.

- (d) Records may take various forms, and do not have to be paper based. For example, they may include:
 - (i) the advice document;
 - (ii) file notes, including records of conversations;
 - (iii) correspondence;
 - (iv) working papers;
 - (v) fact-finding documents used when making inquiries into the client's relevant circumstances; and
 - (vi) audio / video recordings.
- (e) File notes can be maintained via a combination of electronic and hard copy. As a guide, you should consider capturing the following information in your file notes:
 - (i) the date of the discussion;
 - (ii) details of the parties involved in the discussion;
 - (iii) the reason for the contact between client and the adviser (e.g. annual review, request by client, new client etc);
 - (iv) what was discussed, including objectives and issues raised;
 - (v) the desired outcomes, risks, considerations, priorities;
 - (vi) the 'tone' of the discussions - friendly, cautious, worried, tense etc.

Standard 8 of the Financial Planners and Advisers Code of Ethics 2019 requires that the adviser keeps records of clients, including former clients in a form that is complete and accurate.

9 Complying with the best interests' obligations

9.1 Summary

- (a) The law imposes specific obligations (best interests' duty, obligation to only give appropriate advice and prioritise the interests of the client) on persons who provide personal advice to retail clients. The best interest's duty applies to all forms of personal advice, including comprehensive advice and scaled advice.
- (b) The Licensee has an obligation to take reasonable steps to ensure that its representatives comply with:
 - (i) the best interests' duty in s961B;
 - (ii) the requirement to give appropriate advice in s961G;
 - (iii) the obligation to warn the client if advice is based on incomplete or inaccurate information in s961H; and
 - (iv) the obligation to prioritise the client's interest over their own interests in s961J.
- (c) ASIC considers that if an adviser cannot act in the client's best interests in providing them with advice, the provider must not provide the advice—otherwise they will be in breach of s961B. This is particularly the case where the client gives instructions for the adviser to provide advice or carry out a certain action which a reasonable adviser would not consider to be appropriate or in the best interests of the client.
- (d) ASIC considers that any process of giving good quality financial advice has all of the following features:
 - (i) a clearly defined scope that is appropriate to the subject matter of advice sought by the client and the client's relevant circumstances;
 - (ii) an investigation of the client's relevant circumstances;
 - (iii) assistance given by the adviser to the client, if required, to set prioritised, specific and measurable goals and objectives;
 - (iv) where relevant, consideration of potential strategies and options that are available to the client to meet their objectives and needs;
 - (v) where relevant, consideration of all aspects of the impact of the advice—for example, tax or social security consequences;
 - (vi) good communication with the client. This includes:
 - (A) providing an SOA that is logically structured and easy to understand, if one is required; and
 - (B) if appropriate, depending on how the advice is provided, verbal interactions that aim to ensure that the advice and recommendations are understood;
 - (vii) where relevant, strategic and product recommendations that are appropriate for the client's relevant circumstances.

9.2 Summary: safe harbour steps (s961B(2))

Step	Description	Legal jargon unpacked												
1	Identify the objectives, financial situation and needs of the client that were disclosed to the provider by the client through instructions (s961B(2)(a))	<ul style="list-style-type: none"> • Identify what the client’s instructions are; • Identify why the client is seeking advice; • Identify what outcomes the client wants to achieve; • How much the client is willing to pay for the advice; and • Identify basic personal and financial information that is relevant to why the client is seeking advice. <p>Document how you’ve satisfied each of the above</p>												
2	Identify: <ul style="list-style-type: none"> (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) (s961B(2)(b)) 	<ul style="list-style-type: none"> • Identify the type of advice (subject matter) the client is seeking – both explicitly stated by the client and implicitly needed by the client. • Clearly define the scope of the advice that you will provide so it is clear what is included and excluded and ensure the scoping is consistent with the subject matter of the advice. • Identify all personal and financial information relevant to the subject matter and scope of advice. • Identify specifically what the client needs, wants or is looking for in each of these subject matters (to help you identify the most appropriate strategy/product). <p>For example, in investment related advice (superannuation/investment), it would relevant to identify the following:</p> <table border="0" style="width: 100%;"> <tr> <td>✓ income needs (in retirement)</td> <td>✓ need for capital growth</td> </tr> <tr> <td>✓ tax position</td> <td>✓ risk tolerance</td> </tr> <tr> <td>✓ investment horizon</td> <td>✓ investment attitude/philosophy</td> </tr> <tr> <td>✓ any desire to minimise fees/cost</td> <td>✓ need for particular functions/features</td> </tr> <tr> <td>✓ employment security</td> <td>✓ investment vs paying down debt</td> </tr> <tr> <td>✓ expected retirement age</td> <td>✓ need for lump sum (short/long term)</td> </tr> </table> <p>Document how you’ve satisfied each of the above</p>	✓ income needs (in retirement)	✓ need for capital growth	✓ tax position	✓ risk tolerance	✓ investment horizon	✓ investment attitude/philosophy	✓ any desire to minimise fees/cost	✓ need for particular functions/features	✓ employment security	✓ investment vs paying down debt	✓ expected retirement age	✓ need for lump sum (short/long term)
✓ income needs (in retirement)	✓ need for capital growth													
✓ tax position	✓ risk tolerance													
✓ investment horizon	✓ investment attitude/philosophy													
✓ any desire to minimise fees/cost	✓ need for particular functions/features													
✓ employment security	✓ investment vs paying down debt													
✓ expected retirement age	✓ need for lump sum (short/long term)													
3	Where it was reasonably apparent that information relating to the client's relevant circumstances was incomplete or inaccurate, made reasonable	<ul style="list-style-type: none"> • If it is not clear (or not clear enough) to you what the client needs or is looking for, make reasonable enquiries to get the information from the client. 												

Step	Description	Legal jargon unpacked
	inquiries to obtain complete and accurate information (s961B(2)(c))	<ul style="list-style-type: none"> • Document your attempts to obtain this information from the client. • If the advice is based on incomplete or inaccurate information, warn the client that the advice is, or may be, based on incomplete or inaccurate information and because of that, the client should, before acting on the advice, consider the appropriateness of the advice, having regard to the client's objectives, financial situation and needs'. The warning should be tailored to the information that you have not been able to obtain from the client. <p>Document how you've satisfied each of the above</p>
4	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 (s961B(2)(d))	<p>Confirm if the adviser has the relevant skills, knowledge and expertise to provide the advice. If not, refer the client to another person who has the relevant skills, knowledge and expertise.</p> <p>Document how you've satisfied each of the above</p>
5	<p>If, in considering the subject matter of the advice sought, it would be reasonable to consider recommending a financial product:</p> <p>(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</p> <p>(ii) assessed the information gathered in the investigation;</p>	<ul style="list-style-type: none"> • Is there evidence that the adviser has: <ul style="list-style-type: none"> ○ considered the client's existing product; and ○ conducted a reasonable investigation and assessment of other potential financial products (alternatives) that might meet the objectives and needs of the client that would reasonably be considered as relevant to the advice on that subject matter? • Is it reasonable to recommend a financial product in light of: <ul style="list-style-type: none"> ○ the needs and objectives of the client; ○ existing products currently held by the client; ○ competing financial priorities and personal circumstances (if any). <p>Document how you've satisfied each of the above</p>
6	Based all judgements in advising the client on the client's relevant circumstances (s961B(2)(f))	<p>Will your advice (if followed) be suitable for the client having full regard to the client's personal and financial circumstances (information about which you should have obtained)? This includes considering the following about the client:</p> <ul style="list-style-type: none"> • cashflow and affordability (including amount of contributions to super);

Step	Description	Legal jargon unpacked
		<ul style="list-style-type: none"> • impact on superannuation after fees/costs are deducted; • needs and objectives (once prioritised); • health considerations; • risk tolerance; • employment situation; • willingness to pay more fees. <p>Document how you've satisfied each of the above</p>
7	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	<p>Is there anything else the adviser would reasonably be expected to have done to ensure they have acted in the best interests of the client given their relevant circumstances?</p> <p>This can be where a client provides an adviser instruction on what they want (e.g. set up or continue to hold an SMSF). However, the adviser needs to assess whether that action is in the best interest of the client, regardless of the client's request.</p> <p>Document how you've satisfied each of the above</p>

9.3 Satisfying best interests duty: key messages

- (a) When assessing whether an adviser has complied with the best interests duty, ASIC will consider whether a reasonable adviser would believe that the client is likely to be in a better position if the client follows the advice.
- (b) This depends on the circumstances and includes the following factors:
 - (i) the position the client would have been in if they did not follow the advice, which is to be assessed at the time the advice is provided;
 - (ii) the facts at the time the advice is provided that the adviser had, or should have had, if they followed their obligations.
- (c) ASIC is more likely to take the view that the best interests' duty is not being complied with, if an advice model typically leads to a one-size-fits-all outcome (i.e. the processes do not allow each client's relevant circumstances to be taken into account or result in advice that does not reflect the client's relevant circumstances).
- (d) Before recommending that a client acquire a financial product, ASIC expects advisers to formulate the strategy they are basing the advice on. An adviser would need to do this before determining whether it is reasonable to consider recommending a financial product.
- (e) ASIC considers that switching advice must improve, and not simply maintain, the client's position. Any switching advice provided should be able to demonstrate that the client will be in a better position overall, and that any higher fees will be offset by improved benefits that **the client requires**. ASIC noted that in many instances, switching advice is provided based on the theoretical benefits of a new product (e.g.

a broader choice of investments), but the client's specific circumstances do not indicate that this benefit is required or appropriate for them.

9.4 Summary: appropriateness of advice (s961G)

Description	Legal jargon unpacked
<p>The provider must only provide the advice to the client if it would be reasonable to conclude that the advice is appropriate to the client, had the provider satisfied the duty under section 961B to act in the best interests of the client.</p>	<p>The advice you give to the client must be 'appropriate' for the client. In determining appropriateness, ASIC says the advice must be:</p> <ul style="list-style-type: none"> (a) fit for its purpose (i.e. following the advice is likely to satisfy the client's relevant circumstances); and (b) likely to put the client in a better position if they follow the advice. <p>Pay close attention to the factors set out in safe harbour step 6 as there is a close nexus between basing the advice on the client's circumstances and appropriateness of the advice.</p>

9.5 Summary: meeting the conflicts priority rule

Description	Legal jargon unpacked
<p>If the provider knows, or reasonably ought to know, that there is a conflict between the interests of the client and the interests of:</p> <ul style="list-style-type: none"> (a) the provider; or (b) an associate of the provider; or (c) the provider's AFSL; or (d) an associate of the AFSL; or (e) an authorised representative of the AFSL; or (f) an associate of an authorised representative of the AFSL; <p>the provider must give priority to the client's interests when giving the advice.</p>	<p>Has the adviser recommended a product or service to create extra revenue/benefit:</p> <ul style="list-style-type: none"> a) for themselves; b) their associate; c) their AFSL; d) an associate of the AFSL; e) an authorised representative of the AFSL; f) an associate of the authorised representative of the AFSL? <p>If yes, was the advice appropriate and did the advice meet the best interests' duties? If the advice was not appropriate or did not meet the best interests' duties, then the adviser will likely have contravened the conflicts priority rule.</p>

9.6 Meeting the conflicts priority rule: key messages

- (a) In complying with this obligation, the adviser should consider what a reasonable adviser without a conflict of interest would do.
- (b) The conflicts priority rule will not always prohibit an adviser from recommending the client acquire interests in a product issued by, or services offered by, a related party

– provided the advice is appropriate and otherwise meets the appropriateness and best interests' requirements.

(c) Where the adviser gives advice to switch products and the advice has no demonstrated benefits for the client but does benefit the adviser or a related party of the adviser, the interests of the client will not have been prioritised.

(d) ASIC considers that the conflicts priority rule means that:

(i) an adviser must not recommend a product or service of a related party to create extra revenue for themselves, their AFSL or another related party, where additional benefits for the client cannot be demonstrated;

(ii) where an adviser uses an **approved product list** that only has products issued by a related party on it, the adviser must not recommend a product on the approved product list, unless a reasonable adviser would be satisfied that it is in the client's interests to recommend a related party product rather than another product with similar features and costs;

Note: One way that an adviser may be able to do this is by benchmarking the product against the market for similar products to establish its competitiveness on key criteria such as performance history, features, fees and risk. The benchmarking must be reasonably representative of the market for similar products that are offered by a variety of different issuers.

(iii) an adviser must not 'over-service' the client to generate more remuneration for themselves or one of their related parties. This means that the adviser must provide a level of service commensurate with the client's needs. For example, they must not recommend an unduly complex strategy if the client is unlikely to seek ongoing advice; and

(iv) an adviser must recommend non-financial product solutions relevant to the client's situation, where appropriate, even if this means the client is less likely to need financial advice in the future (e.g. advice on debt reduction, estate planning and/or Centrelink benefits).

10 Consequences of non-compliance

10.1 Suspension or cancellation of authorisation

- (a) The Licensee has an obligation to provide financial services efficiently, honestly and fairly and ensure that its representatives comply with financial services law.
- (b) As a representative of the Licensee, if the adviser cannot demonstrate an ability to meet the legal and regulatory requirements on an ongoing basis, the Licensee may suspend or cancel the authorisation of the adviser.

10.2 Financial consequences

As above, if the Licensee is required to remediate or compensate clients to meet its legal and regulatory obligations, the Licensee reserves the right to offset or withhold fees and commissions payable to the representative for the purposes of meeting the costs and loss associated with remediation.

10.3 Administrative consequences

Systemic non-compliance with the best interests' obligations by an adviser and a failure by the Licensee to detect the non-compliance may result in administrative action by ASIC which includes:

- (a) banning of the offending adviser;
- (b) suspension, cancellation or regulatory action by ASIC;
- (c) civil penalties and fines against the adviser or Licensee.

APPENDIX A

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