



FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

PUTTING YOUR CLIENTS FIRST

Guidance on best interest duty



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DISCLAIMER

Important:

1. This Best Practice workbook has been produced to assist FPA members to understand elements of the Best Interest Duty and their professional obligations and should not be relied upon by members or others as a substitute for legal or compliance advice from an appropriately qualified expert.
2. Under the Corporations Act 2001, advice providers who fail to comply with the best interests duty and related obligations, will be subject to civil penalties and potential banning orders. FPA members who fail to meet their obligations under the FPA Code of Professional Practice may be subject to disciplinary action.

A message from the CEO

It's hard to believe five years has passed since the implementation of FoFA. For many of you, the initial implementation of FoFA brought a lot of inefficiency and confusion to your practice. For some, this has improved over the years, and for others, it may still be a struggle as new processes and tools are added. It's easy to forget the legislation we are trying to solve for. Add to that we are now also seeing case law and a number of ASIC Reports clarifying the operation of FoFA and it can be difficult to know where we are.

The FPA is committed to supporting you to provide high quality financial advice to your clients, in a way that meets your best interest obligations. It is important that all financial planners understand their obligations under the best interest duty. It is also important to understand the best interest duty is more than a compliance checklist.

Acting in the best interest of your client goes beyond a personal belief that you are doing the right thing. It requires documented processes and actions that clearly demonstrate that you have truly acted in the best interest of your client.

This guidance booklet is based on a practical assessment of the best interest obligations and the FPA Code of Professional Practice. It contains simple and practical tools, guidance and resources, and provides real advice solutions to help you and your business put the best interest theory into practice. Further, it includes case studies that help you demonstrate how the best interest duty works in practice.

We understand you may already have tools and processes embedded within your advice business, either through your licensee or at a practice level. This workbook aims to complement those processes and help you meet your professional obligations as a financial planner.

We hope you find this resource useful.



Dante De Gori CFP®
Chief Executive Officer
Financial Planning Association of Australia Ltd

Introduction

For many of us, the commencement of the Future of Financial Advice (FoFA) reforms in 2013 represented a seismic shift in the way we provided advice. For others it meant changing our documentation processes, and for some it was business as usual. Irrespective of which group you were in, a lot of time has been spent ensuring all the right boxes have now been ticked and a lot of confusion and worry about whether we were really doing the right thing.

At the FPA Roadshow in 2013, the FPA presented professional solutions for meeting the best interests duty obligations including professional engagement; professional competence; professional diagnosis; and recommend in Best Interest using the FPA Code of Professional Practice in placing the client's interests first.

Around this same time, there was a great deal of media coverage about the best interest requirements, in particular the meaning of clause (g) which has been termed the catch-all provision, and the potential impact it presents for financial planners and their businesses.

Off the back of this, in 2015 the FPA produced a Best Practice Workbook – Taking Other Steps: Best Interest Advice in a Strategic World - expanding on our 2013 Bulletproof Guide to Financial Planning and provided advice processes, case studies, analysis and communication tools, and practical tips, as the next steps in considering professional solutions to meeting your best interests duty obligations.

In 2016 we produced a workbook on Delivering Excellence - Further advice solutions for a superior client experience which provided practical guidance and tools on how to build long-term relationships with your clients. The workbook brought to life examples and strategies to help you deliver best practice further advice to your clients. Topics covered included the need for further advice, trigger events for further advice, as well as a dashboard for tracking client progress and goals in an easily understandable format.

In 2016 we also published The FPA Life Insurance Advice Guide as a comprehensive resource to support you in the area of life-risk advice. With input from FPA members, we developed this guide to help you continually deliver the best possible service to your clients.

As the FPA Code of Professional Practice goes beyond the FoFA legal requirements, we incorporated your professional obligations into this Best Practice Workbook as it will assist you in meeting your legal obligations,.

Since 2013, a number of ASIC reports, court case law and reviews of advice have provided useful context around best interest advice. We also have the imminent introduction of new education and ethical standards from Financial Adviser Standards and Ethics Authority (FASEA) which start from an assumption that FoFA has been in place for five years and is well embedded.

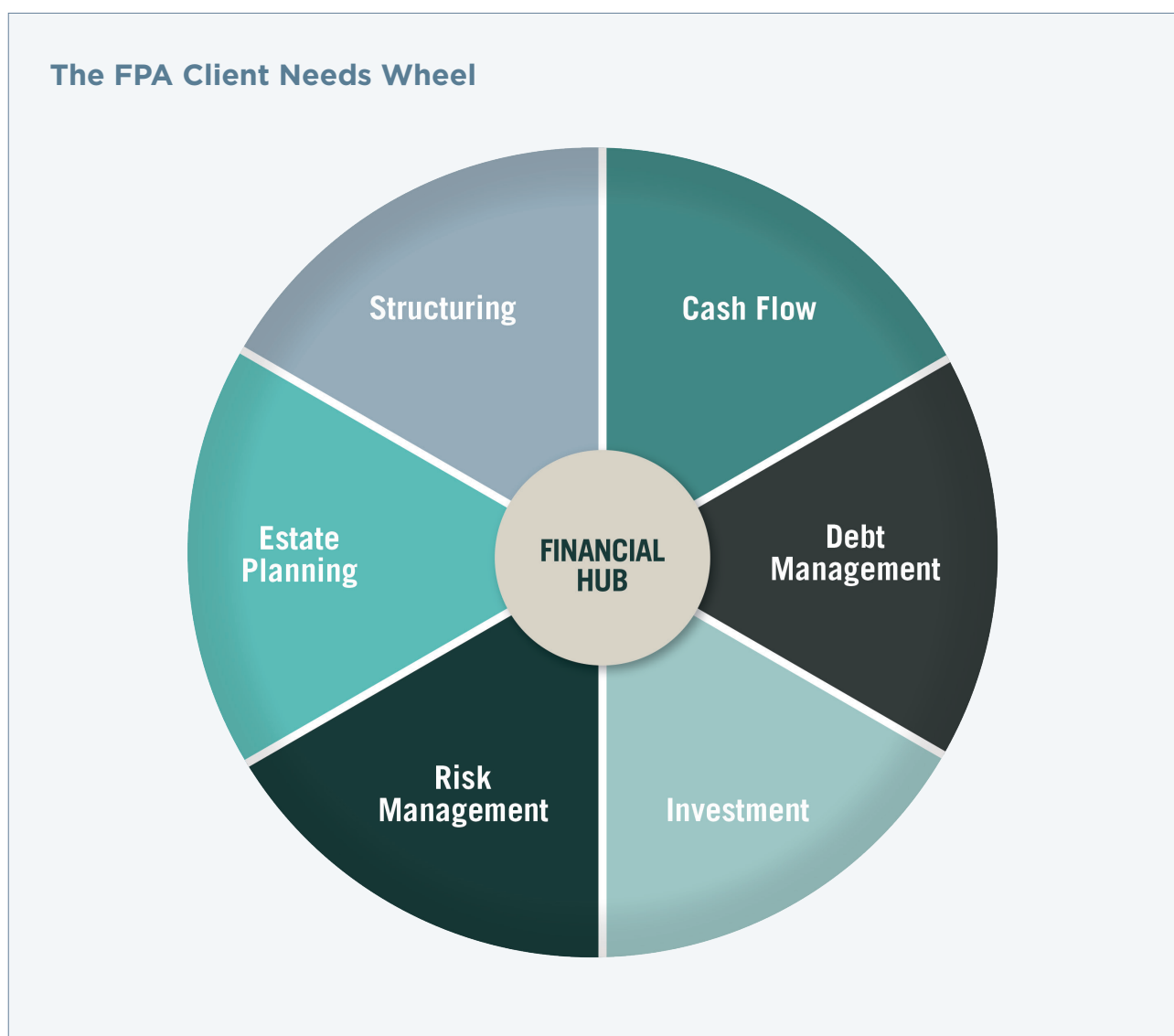
The FPA is taking the opportunity of the 2018 FPA Roadshow to reissue an updated version of the 2015 Best Practice Workbook – Taking Other Steps: Best Interest Advice in a Strategic World. This workbook aims to provide a FoFA refresher and assist you to deliver advice that is not only in the best interests of your clients and appropriate as required by law, but professionally suitable to your clients objectives, needs and circumstances as identified in the professional financial planning process required by the FPA's Code of Professional Practice.

Addressing your client's financial planning needs

Your client's financial planning needs sit at the heart of both the FPA's Code of Professional Practice and the four elements of the Best Interests Duty. This is why the FPA Code can assist you to meet your best interest obligations and provide best practice professional advice both now and well into the future.

Determining whether you are able to meet your client's needs is a critical first step to meeting your professional obligations under the FPA Code and through it, the best interest duty and related obligations in the law.

The six financial planning needs your client is likely to require to be addressed across the short term, medium term and long term are set out in the client needs wheel diagram below:



Explaining the Client Needs

Note: This is not a complete list but rather an example of the types of questions and issues considered under each need.

CASH FLOW

- ▶ What does your client's cash flow currently look like?
- ▶ How does your client's income compare to their expenditure?
- ▶ What changes to your client's cash flow are expected in the short term, medium term and long term?
- ▶ How secure are their current sources of income?
- ▶ Will those sources and levels of income be maintained or change across short, medium and/or long term time horizons?
- ▶ Does your client anticipate any significant or regular change to expenditure? For example what is your client's likely expenditure need in retirement?
- ▶ How does your client expect to fund their retirement income needs?
- ▶ Does your client expect family or other relationships to impact on their expenditure in the medium or longer term?

DEBT MANAGEMENT

- ▶ What liabilities does your client currently have?
- ▶ Does your client expect any additional liabilities in the future?
- ▶ How are debts being serviced?
- ▶ How are their debts secured, if applicable?
- ▶ How does your client expect this might change in the future?
- ▶ How are the debts priced?
- ▶ Does your client have enough or too little debt?
- ▶ How efficiently is your client managing debt?

INVESTMENT

- ▶ What assets does your client hold, over what time frame and in what capacity?
- ▶ How long does your client expect to hold these assets and in what circumstances could this change?
 - » For example, what superannuation or other long term investments does your client have?
- ▶ Does your client own property or other assets?
- ▶ What are your client's intentions with these assets over different the short, medium and long term time horizons?
 - » For example, does your client expect to dispose or transfer assets to fund cash-flow needs in or approaching retirement?

RISK MANAGEMENT

A. Consider your client's risks and capacity to tolerate loss of capital

- ▶ What risks does your client face in relation to cash flow? For example, will your client's income level continue?
- ▶ What unexpected expenditure could arise for your client?
- ▶ What strategies does your client currently have in place to control or mitigate these risks? For example, how would your client manage an adverse health event that lead to temporary or permanent incapacity to generate income from current employment?
- ▶ How would temporary loss of current salaried employment impact longer term needs such as investment strategy to accumulate retirement savings?
- ▶ Could your client afford to pay their mortgage on their family home if they were faced with loss of their income?
- ▶ How reliant is your client on the income and continued earning capacity of a spouse to realise medium and longer term goals?
- ▶ Is your client taking on too much or too little risk to achieve their financial planning objectives across the short, medium and long term time horizons?

B. Consider your client's appetite for risk

- ▶ Is your client prepared to take on risk to achieve their financial planning objectives across the short, medium and long term time horizons?
- ▶ Is the risk required in order to achieve a financial objective beyond your client's personal appetite for risk?
- ▶ Do you need to change your client's financial goal(s) over the short, medium and/or long term to cater for their appetite to take on risk?
- ▶ Do your client's currently have a high risk strategy in place which is beyond their appetite for risk?
- ▶ Based on your review of your client's circumstances, do your client's financial planning goals require them to continue with or change their current level of financial risk?

C. Financial literacy and behavioural finance considerations

- ▶ How does your client make decisions about investments?
- ▶ Do your client's emotions play a part in their investment decisions?
- ▶ What is your client's attitude to money?
- ▶ Does your client prioritise their finances? Do they pay off bills and debt before spending?
- ▶ Is your client comfortable making decisions about financial matters?
- ▶ What past financial experiences has your client had that may impact on their behaviour when making decisions about financial matters?
- ▶ Is your client particularly risk averse? Are they irrationally confident with respect to risk?
- ▶ Does your client prefer to avoid large, upfront payments over paying in increments? Even where paying in increments might incur a financial disadvantage?
- ▶ How does your client feel about incurring losses in the short term to maximise long term opportunities?
- ▶ Is your client capable of basic financial calculations (e.g. calculating interest, understanding ratios, etc.)? If not, could your client understand these calculations if you explained them?
- ▶ Does your client have any emotional attachments (e.g. dependents) which influence how they think about financial matters? To what extent do these attachments change their perception of financial matters?
- ▶ Does your client expect future performance to reflect past outcomes?
- ▶ To what extent does your client independently seek to understand financial matters and their financial situation? Is your client looking to "set and forget" their financial plan, or are they engaged?
- ▶ Has your client come to the engagement with pre-existing ideas about investment strategy or financial planning?

D. Consider your client's need for outsourcing risk

- ▶ What insurance protection does your client currently have in place?
- ▶ Based on your analysis of your client's risk capacity, tolerance and other needs, does their current protection provide adequate cover?

ESTATE PLANNING

- ▶ Who has a potential claim on your client's estate?
- ▶ What does your client intend to provide to their estate?
- ▶ What are your client's estate and non-estate assets?
- ▶ Are wills, powers of attorney and other arrangements in place, including binding nominations within super?

STRUCTURING

- ▶ How are your client's affairs currently structured for
 - » tax planning
 - » asset protection
 - » wealth transfer, and
 - » government funded benefits?
- ▶ Are these structures efficient?

Setting the ground work for best interest advice

Set the ground work for meeting your obligations by ensuring your advice engagement is based on your high level initial assessment of your client's needs. The FPA Client Needs Wheel is a useful tool and may be used to assist you to:

1. Identify your client's potential financial planning needs over the short term, medium term and long term time horizons, including any financial planning needs your client may be unaware of.
2. Communicate these needs to your client.
3. Identify the types of professional services your client may require during a financial planning engagement.
4. Identify possible gaps between the client's anticipated financial planning needs and the competencies, skills, experience, knowledge and relevant authorisations you, or the firm you work for have or can call on, to help your client, and potential conflicts of interest that may result should the engagement proceed.
5. Start to identify your client's financial planning and other life goals and objectives.
6. Start to identify areas of potential conflicts between your client's objectives, needs and priorities over the short, medium and long term time horizons.
7. Start to identify financial planning issues that will need to be addressed through your advice and the priority areas of your advice.
8. Communicate each of these identified elements to the client.
9. Identify the subject matter of the advice (whether expressly identified by the client, or implicit having regard to the client's identified needs, objectives, and circumstances) in establishing the professional services you will provide your client.
10. Scope and prioritise your client's advice needs that you will and will not address in your advice.
11. Identify your client's relevant quantitative and qualitative information and your client's relevant circumstances.
12. Identify additional information about your client that you may require to be able to provide advice that meets your client's needs. You should also identify whether this is information your client will source and provide, or that you will gather from the appropriate source e.g. Government department).
13. Determine, prepare and communicate the proposed terms of engagement with your client.

This process will help you clearly identify the appropriate subject matter and scope of the advice that is needed to meet your client's financial planning needs. The process will set the foundations to ensuring your advice is in the best interests of your client and will help you meet your obligations including 'taking any other steps' required under the catch-all clause (g) provision.

Client communication and documentation

Identifying and communicating your client's short, medium and long term needs and objectives will allow you to discuss and determine with your client what they would like you to include in your current advice. In doing this you are also communicating with your client additional needs your client may have but does not want you to include in your current advice. This demonstrates other steps you have taken in your client's best interest and should be clearly documented in your SOA.

It will also enable you to clearly show how your advice strategy and recommendations meet your client's goals, objectives and needs over the short, medium and long term. This is vital for demonstrating that you have put your client's needs first.

Use the following Client Needs Analysis to help map your client's financial planning needs to the short, medium and long term time horizons. This may be a helpful and clear way to show your client your analysis and understanding of their circumstances, needs and priorities.

Client Needs Analysis			
Needs/Time Horizon	Short Term	Medium Term	Longer Term
Cash Flow			
Debt Management			
Investment			
Risk Management			
Structuring			
Estate Planning			

Financial Planning Client Needs Wheel case study

This case study demonstrates how to utilise the client needs wheel and analysis table to chart your analysis and understanding of your client's needs over the short, medium and long term. The needs analysis table offers a clear way for you to communicate this with your client.

Please note: This case study serves to demonstrate how each client need interacts with and impacts on other client needs over the short, medium and long term time horizons, and how you must consider your client's priority needs when scoping and providing your advice.

Client background

The following clients have never seen a financial planner before. They have been referred by a friend and are interested to understand how you can assist them achieve their goals and objectives for their future.

Robert and Patricia

Robert and Patricia are a married couple in their early 50's with two teenage children (15 and 16). Robert is an advertising manager, and Patricia owns and operates a small interior design business.

Financial situation

Details	Robert	Patricia	Patricia's Business
Age	53	51	—
Annual Salary	\$120,000	\$90,000	Structure: Company
Superannuation	\$270,000 (across 5 accounts)	\$95,000	Turnover: \$500,000
Insurance	Endowment Policy: \$80,000	—	Assets: Commercial Property
Liabilities	Mortgage (Joint): \$300,000		Business loan: \$200,000

Goals and objectives

- ▶ Pay off their mortgage as soon as possible.
- ▶ Robert would like advice on consolidating his superannuation. Each of Robert's super accounts are attached to different corporate super advisers.
- ▶ Patricia would like advice on the possibilities of selling the commercial property her business owns, and leasing it back from the new owner. Patricia has a long-standing relationship with her accountant who looks after her company's tax affairs.
- ▶ Their children are 15 and 16 years old - In roughly 10 years' time, Robert and Patricia would like to be able to pay off their children's HELP debts so they can start their careers debt-free. (Allow \$50,000 per child).

Financial planning issues:

- ▶ Maximising superannuation contribution (limits and timing) versus paying off their mortgage
- ▶ Setting aside funds for their teenage children versus paying off their mortgage or topping up their super and accessing those funds in 10 years time
- ▶ Whether their current cash-flow allows them to achieve any of their goals
- ▶ The viability of their goals and priorities versus personal insurance requirements to protect their future
- ▶ Whether super consolidation is better than keeping some separate due to attached benefits and features

Client Needs Analysis

Needs/Time Horizon	Short Term	Medium Term	Longer Term
Cash Flow	Identify and establish efficiency between income and tax on investment, asset ownership, interest and expenditure.	Patricia's income from business	Income in retirement
Debt Management	<ul style="list-style-type: none"> • Mortgage repayments • Business loan repayments 	<ul style="list-style-type: none"> • Mortgage repayments • Business loan repayments • Children's HELP debts 	<ul style="list-style-type: none"> • Paying off mortgage by retirement • Paying off business loan
Investment	<ul style="list-style-type: none"> • Reviewing Robert's Super • Ensure investments and liquidity of assets support debt management needs to pay off mortgage and children's HELP debts in the future. 	<ul style="list-style-type: none"> • Possible sale of Patricia's business' commercial property • Review endowment policy 	<ul style="list-style-type: none"> • Sale of business when retire
Risk Management	<ul style="list-style-type: none"> • Review couple's risk profile (risk appetite and risk capacity) • Review of insurances (including business insurances) 	Consider any health risks Robert and Patricia may face and reassess their insurance needs to ensure protection is inline with their cash flow and debt management needs.	<ul style="list-style-type: none"> • Consider longevity risk and the impact on retirement income needs • Consider Patricia and John's understanding of retirement income options and possible government benefits.
Structuring	Review the structure of Robert and Patricia's investments with regard to cost and tax efficiency.	Minimise tax consequences of proposed sale of the commercial property in Patricia's business.	<ul style="list-style-type: none"> • Consider options for retirement including government benefits to support income in retirement • Impact of sale of Patricia's business
Estate Planning	Set up wills and appropriate POAs, superannuation beneficiaries, and insurance beneficiary structures.	Review wills, POAs and estate planning structures.	Review estate planning goals during retirement and consideration of ongoing insurance needs.

Client Needs case study — where things go wrong

Client Background

The following client is new to your financial planning practice. They are just getting their financial position sorted in preparation for marriage and purchasing a house and would like assistance in understanding their options for achieving their goals and objectives in an environment where they are no longer living alone.

Steve

Steve is 29 and was shortly to be married. He planned to buy a home with his fiancé and spend a few years enjoying life together before they looked to start a family. He was starting to think about getting himself financially sorted out before his wedding so everything was in place to get their life on track. This includes reviewing his super investment return and life insurance and putting in place a savings plan and budget to prepare for life after marriage.

Steve's new planner went through a process of collecting Steve's goals and objectives and financial position. This included asking Steve to get information about his current super fund's balance and investment mix which Steve looked up and gave him.

Financial situation

Details	Steve
Age	29
Occupation	Business Analyst
Employment Status	Full-time
Annual Salary	\$80,000
Proposed Retirement	65
Smoker	No
Private Health Cover	Yes
Superannuation	\$40,000 (LMN - Employer Fund) Balanced Fund
Life Insurance	Life and TPD policy with LMN Fund of \$120,000

Steve was asked to sign an authorisation for his planner to collect information from his super fund.

Goals and objectives

Steve informed his planner that he would like to:

- ▶ Save for a new home with his fiancé
- ▶ Get a budget sorted out
- ▶ Make sure his super was invested correctly
- ▶ Make sure he had enough life insurance to look after his fiancé after they are married.

Activity

Consider what additional information Steve's planner should have collected.

Additional information required:

Steve's planner prepared the advice which limited the scope of the advice to sorting out his super and life insurance. Steve's planner noted that he limited the scope in this way until Steve was able to bring in his fiancé in to get an understanding of her goals around property and family and was able to include her financial position into the savings plan and budget.

Steve's planner compared his current super funds investment options with Steve's risk profile based on the information Steve had provided and a review of the PDS for Steve's fund. He recommended he roll over to a new fund with investment options which were more appropriate for his risk profile. He recommended individual Life, Total and Permanent Disability and Income Protection policies for Steve in the new super fund.

Activity 2

In preparing the recommendations, what steps has Steve's planner failed to complete?

Additional steps required:

Steve was happy to have his super and insurance sorted out, so agreed to implement the recommendations. Steve's planner prepared application forms to roll over his super and apply for the new insurance cover including preparation for the underwriting process.

While Steve's super rollover was implemented without any issues, Steve was not accepted for TPD or Income Protection cover with the new life insurer without exclusions and significant loading being added. Further, on investigation by Steve, he identified that his previous super fund had contained life, TPD and Income protection without exclusions or loadings at similar levels to those recommended.

FOS Findings

Steve made a complaint to the licensee internal dispute resolution who noted that Steve has failed to inform his planner he had health conditions which would make a life insurance product claim likely, or that his existing funds had life, comprehensive TPD and comprehensive income protection cover available already. Steve decided to take his complaint to FOS for review as was noted in the licensee's information.

FOS found that Steve's planner had failed to make reasonable enquiries into Steve's health or existing super funds insurance offering prior to making the recommendations. Further, Steve had signed an authority for the planner to get this information which he had failed to do. FOS further identified that the original and new super fund were administered within the same financial services provider who Steve's planner was authorised by.

The panel found:

- ▶ Steve's planner had a duty to know the advantages and disadvantages of entering in and out of different superannuation products and advise the applicant of these.
- ▶ Steve's planner should have enquired further into the applicant's personal and health circumstances and whether he held any insurance before rolling over his original super.
- ▶ Steve's planner failed to comply with his duty of care and obligations under the Act in undertaking an appropriate process.
- ▶ The Panel was satisfied that the advice to switch super products was the direct cause of the applicant's loss.
- ▶ Reinstatement of the TPD and IP insurance policies was unsuccessful.
- ▶ Actuary reports were obtained to assist with calculating the applicant's loss to age 65 taking into account premium rates and risks associated with making a claim.

Activity 3





Consider what steps in the Code would mitigate this situation occurring in your planning process.

How would you mitigate this?

Providing best practice advice in the best interest of your client

Providing advice that is in the best interest of your client requires you to clearly assess, demonstrate and document that your client will be in a better position if they follow your advice, and that you have put your client's interests ahead of your own.

Remember, there are four separate obligations that operate alongside each other and apply every time personal advice is provided.

-  **1. Best Interests duty in s961B – known as the ‘safe harbour’ steps**
-  **2. The appropriate advice in requirement s961G**
-  **3. Give a warning or advice based on incomplete or inaccurate information in s961H**
-  **4. The conflicts priority rule in s961J**

All four obligations work together to make up your ‘best interest duty’ and must be met and clearly documented every time you provide personal advice to your clients.

1. Best interests duty in s961B – known as the ‘safe harbour’ steps

Under the Corporations Act, if you can show that you have taken the steps in s961B(2), you are considered to have complied with the requirement to acting in your client's best interests. This includes:

1. Identifying the objectives, financial situation and needs of the client as disclosed through instructions;
2. Identifying the subject matter of the advice sought by the client, whether explicitly or implicitly;
3. Identifying the objectives, financial situation and needs of the client that would reasonably be considered as relevant to the advice sought on the subject matter by the client (ie, the client's relevant circumstances).
4. Making inquiries to obtain complete and accurate information on the client's circumstances;
5. Assessing your competency to advise the client;
6. Making reasonable investigations, research and assessment of a product if you are going to advise a client invest in that product;
7. Basing all judgements on the client's relevant circumstances; and
8. Taking any other step(s) at the time the advice is provided that would reasonably be regarded as being in the best interest of the client, given the client's relevant circumstances.

As the financial planning client needs wheel encourages you to analyse client information to identify and map the short, medium and long term financial planning needs of the client, this process will assist you in ‘taking any other steps’ from the outset of the advice engagement you have with each client.

Mapping your client's financial planning needs to the time horizons will also enable you to clearly identify the subject matter of the advice, and assess and demonstrate your competency to provide the advice your client needs.

Your client needs analysis will enable you to clearly demonstrate how all your judgements, advice strategies and recommendations are based on the client's relevant circumstances, presented in a client-friendly form of documentation. See:

- ▶ Corporations Act - s961B
- ▶ ASIC Regulatory Guide RG175.216-411
- ▶ FPA Practice Standards 1, 2, 3, 4, 5, 6, and 7 of the FPA Code of Professional Practice.

Advice Process	For your consideration
Client circumstances	<p>ASIC requires you to identifying your client's relevant circumstances if you intend to rely on the safe harbour steps in s961B to meet your best interest duty obligations.</p> <ul style="list-style-type: none"> ▶ Use your professional judgement and complete reasonable inquiries into your client's relevant circumstances ▶ To clearly show your client your understanding of their circumstances, include in your SOA: <ul style="list-style-type: none"> » details of your clients current circumstances <ul style="list-style-type: none"> ○ Current income and income required in retirement if applicable ○ Financial position ○ Insurances ○ Wills and Powers of Attorney ○ Discharge / Resignation / Retirement entitlements » a list of all the relevant information provided by your client » information you have derived from discussions with your client, such as investment preferences and appetite for risk » include the your completed client needs analysis detailing your client's short, medium and long term goals » environmental factors which may influence your advice » your client's ability to tolerate risk » other client information gained through your inquiries » client information you believe to be inaccurate or incomplete ▶ our client's relevant circumstances may include a life event they have experienced and/or a goal your client is seeking to achieve ▶ Clearly document your client's circumstances in your SOA. <p><u>Relevant client circumstances for financial product advice</u></p> <p>Where advice relates to financial products with an investment component, the client's relevant circumstances may include the client's:</p> <ul style="list-style-type: none"> ▶ Need for regular income (e.g. retirement income) ▶ Need for capital growth ▶ Desire to minimise fees and costs ▶ Tolerance for the risk of capital loss, especially where this is a significant possibility if the advice is followed ▶ Tolerance for the risk that the advice (if followed) will not produce the expected benefits. For example, in the context of retirement advice, this may include considering longevity risk, market risk and inflation risk ▶ Existing investment portfolio ▶ Existing debts ▶ Investment horizon ▶ Need to be able to readily 'cash in' the investment ▶ Capacity to service any loan used to acquire a financial product, including the client's ability to respond to any margin call or make good any losses sustained while investing in leveraged products ▶ Tax position, social security entitlements, family commitments, employment security and expected retirement age.

Advice Process	For your consideration
	<p><u>Financial literacy and behavioural considerations</u></p> <p>Use your professional judgement to determine if environmental, social or ethical considerations are important to your client</p> <ul style="list-style-type: none"> ▶ Consider how your client makes financial decisions and their attitude to money. <p><u>Documentation</u></p> <p>You should clearly document your client's circumstances in your SOA to</p> <ul style="list-style-type: none"> ▶ Show your client your understanding of their circumstances, and ▶ Enable you to clearly demonstrate how your advice considerations, strategy and recommendations are based on your client's circumstances.
<p>Make reasonable enquiries to obtain client information</p>	<p>You are required to make reasonable inquiries to obtain complete and accurate information about your client's relevant circumstances.</p> <p><u>Client circumstances</u></p> <p>Your client's circumstances include:</p> <ul style="list-style-type: none"> ▶ objectives <ul style="list-style-type: none"> » financial situation » needs of your client ▶ Analyse the information your client has provided to identify their circumstances and any additional information you require to provide advice that is in their best interest. <p><u>Making enquiries</u></p> <p>Gathering all the relevant information to thoroughly ascertain your client's circumstances and current financial position and needs can require significant effort and time for both you and your client.</p> <ul style="list-style-type: none"> ▶ Consider ways to simplify this process for your clients by offering them helpful tools for gathering information, for example <ul style="list-style-type: none"> » ASIC's MoneySmart TrackMySPEND app and Budget Planner ▶ Ensure your client understands the importance of the information you require in relation to their stated goal. ▶ Discuss with your client any life events they may have experienced or can foresee that may change their circumstances and impact on their financial situation, such as <ul style="list-style-type: none"> » planning a family » a change in work and income » buying a home or investment property » inheritance » getting married, divorced or separated <p><u>When your client does not provide information</u></p> <p>If your client does not provide you with relevant information, you should discuss with your client the importance of the information in relation to your ability to provide advice that will meet their goals and put them in a better position, for example</p> <ul style="list-style-type: none"> » Have an open discussion with your client about the value of your advice and how you can assist them in navigating the financial options available to them to help them achieve their goals.

Advice Process	For your consideration
	<ul style="list-style-type: none"> » Inform your client of what you can and cannot do based on the limited information they have provided. For example: <ul style="list-style-type: none"> ○ you cannot provide specific personal advice without understanding their current circumstances. ○ any advice provided may not be right for them and may put them in a worse position as it is not based on their circumstances ○ you cannot ensure your advice will achieve their goals as you do not know their current situation <p>Documentation</p> <p>It's important that you document this discussion in your SOA to demonstrate you have made reasonable enquiries to obtain the information.</p>
<p>Client needs, goals and objectives</p>	<p>Use the client needs analysis to identify, set and prioritise, specific and measurable goals and objectives with your client based on your clients circumstances and information.</p> <p>Client's stated objectives</p> <ul style="list-style-type: none"> ► Assess the feasibility of your client's stated objectives <ul style="list-style-type: none"> » discuss with your client any stated objectives that appear to be unrealistic » consider the strengths and weaknesses, opportunities and limitations of your client's current financial situation » discuss alternative goals with your client » ensure you prioritise your client's goals <ul style="list-style-type: none"> ○ discuss with your client any competing needs that your client may have that could result in one goal being achieved to the detriment of another goal ► Once you have assessed, discussed and agreed with your client realistic goals and objectives, you may need to review the scope of the advice you will be providing. ► Clearly document your client's goals, needs and objectives using the client needs analysis chart.
<p>Identifying the subject matter and scoping the advice</p>	<p>ASIC requires you to identify the subject matter of the advice, prior to identifying the scope of your advice engagement with your client.</p> <p>Subject matter</p> <p>Use the client needs analysis to identify the subject matter of the advice and the scope of your advice engagement.</p> <p>Client needs analysis</p> <p>Determining the subject matter of the advice should not be limited to what your client tells you they want and need. Focus on identifying:</p> <ul style="list-style-type: none"> ► Your client's short, medium and long terms needs for: <ul style="list-style-type: none"> » cash flow » debt management » investment » risk management » estate planning » structures

Advice Process	For your consideration
	<ul style="list-style-type: none"> ▶ Your client's personal strengths/weaknesses, capabilities and preferences in the way your client manages money ▶ What your client does not understand about their current situation and future financial needs ▶ How your client responds to risk and loss ▶ whether your client is comfortable using financial tools and technology ▶ Your clients level of financial literacy and understanding of their financial position ▶ How your client sets and plans their financial goals <p>Outside scope</p> <ul style="list-style-type: none"> ▶ Avoid scoping difficult or challenging issues out of your advice <ul style="list-style-type: none"> » such issues should be discussed with your client. Document your discussion in your SOA. » if the issue is outside your competence area, consider seeking external expertise to assist you and your client, or declining the advice <p>Reviewing and revising the scope of the advice</p> <p>You may need to review and revise the scope of the advice once you have investigated your client's circumstances, financial planning needs and goals.</p> <ul style="list-style-type: none"> ▶ Identify and map your clients financial planning needs using the client needs analysis chart and wheel ▶ Use your professional judgement to determine if it would be in your client's best interest to receive a broader scope of advice or comprehensive advice. <p>Is the scope in your client's best interest?</p> <p>Use your professional judgement to determine if the scope of the advice your client is seeking is in their best interest.</p> <ul style="list-style-type: none"> ▶ If you determine your client's stated subject matter or scope of the advice is not in their best interest, discuss revising the scope of the advice with your client. <ul style="list-style-type: none"> » use your client needs analysis to show your client the financial planning issues and the short, medium and long term needs you have identified » demonstrate why your client's circumstances have resulted in the short, medium and long term needs you have identified » discuss with your client the risks they may face if they do not address the needs identified in your analysis » discuss with your client the risks associated with their stated subject matter and scope of the advice they are seeking » document your discussions with your client ▶ If your client insists on proceeding with their stated subject matter or scope of advice, which you believe is not in their best interest, you should consider declining the advice. <p>Documentation</p> <p>Clearly document the subject matter and scope of the advice you and your client have agreed upon, in your SOA detailing what you will and will not be considering in your advice to your client.</p>

Advice Process	For your consideration
Your competency	<p><u>Start with a professional engagement</u></p> <ul style="list-style-type: none"> ▶ To determine whether you can meet your client's needs, discuss with your client: <ul style="list-style-type: none"> » the financial planning process » your role and services » information about your license » competence and experience. <p><u>Competency goes beyond expertise</u></p> <ul style="list-style-type: none"> ▶ Consider your: <ul style="list-style-type: none"> » limitations and authorisations » education, professional entry, » CPD to maintain competence, » experience » expertise <p><u>Use professional judgement</u></p> <ul style="list-style-type: none"> ▶ Use your professional judgement to determine, with your client, whether <ul style="list-style-type: none"> » the services you are able to offer are likely to provide benefit and value for your client » your expertise and services will enable you to provide advice that meets your clients needs and goals, is appropriate, prioritises the best interests of your client and will put them in a better position. <p><u>Declining advice</u></p> <ul style="list-style-type: none"> ▶ If you are not trained or authorised to provide advice on the subject matter identified in your client needs analysis, you must not provide advice on that subject matter.
Product research and considerations	<p>The best interest and appropriate advice requirements are particularly important when recommending your client change products from their existing products.</p> <p><u>Aligning products with client needs and goals and advice strategy</u></p> <p>When researching products, always start with your client's needs and goals – consider your Client Needs Analysis</p> <ul style="list-style-type: none"> ▶ Consider short, medium and long term client needs ▶ Ensure any products you consider fit within your advice strategy ▶ Give careful consideration to your client's appetite for risk and capacity to tolerate the risk of capital loss ▶ Clearly document your consideration of your client's risk tolerance in relation to your product considerations ▶ Ensure your client truly understands the features, risks, benefits, disadvantages and costs of the products you recommend. This is paramount to linking your appropriateness obligations with your best interest requirements. <p><u>Consider existing product first</u></p> <ul style="list-style-type: none"> ▶ Always consider your client's existing product first ▶ Will it enable your client to meet their short, medium and long term goals? ▶ If not, why not?

Advice Process	For your consideration
	<ul style="list-style-type: none"> ▶ Will your client's existing product fit within your advice strategy? (See 'Other reasonable steps' section on page 23 for more detail on advice strategy and best interest) ▶ Clearly document your consideration and analysis of your client's existing product. <p>If you are recommending your client change products, it is vital to show:</p> <ul style="list-style-type: none"> ▶ How your recommended product fits with: <ul style="list-style-type: none"> » your client's risk appetite » your Client Needs Analysis over the short, medium and long term » how it will enable your client to achieve their goals » your advice strategy, AND ▶ How your client's existing product does not help your client achieve their goals ▶ Discuss with your client to ensure they truly understand the following points of the product you recommend and how these better meet their needs and circumstances than their existing product: <ul style="list-style-type: none"> » risks – the amount of money they could lose – are they comfortable with this risk? What are the alternatives? » features – services, investment options, additional offerings within the product, etc » benefits – higher returns, strength of product provider » disadvantages – may lose life insurance, liquidity » costs – fees <p>Consider the net benefits of new and existing products</p> <p>You must consider the net benefits of both the client's existing product and your recommended new product based on your client's circumstances.</p> <ul style="list-style-type: none"> ▶ What are the benefits and disadvantages of the existing product <ul style="list-style-type: none"> » compare the benefits and disadvantages, risks and costs of your clients existing product with alternative solutions that meet your clients needs and risk tolerance » ensure you compare like with like, including asset allocation and funds invested <ul style="list-style-type: none"> ○ if comparing existing client products, consider the amount the client has invested in each product (different amounts will give a different comparison result) ○ ensure the asset allocations of the products being compared are the same ○ the risk profile of each product are the same » you may like to consider projections to demonstrate how different products would perform based on your client's needs and circumstances ▶ What are the risks for your client based on their circumstances, in maintaining their investment in their existing product? ▶ What are the costs associated with investing in the existing product ▶ Consider the whole of the product, for example <ul style="list-style-type: none"> » insurance component within a superannuation account » when switching from accumulation to pension phase you must consider the Transition to Retirement and pension of the client's existing accumulation product.

Advice Process	For your consideration
	<ul style="list-style-type: none"> ▶ Follow the same process for other products that may enable your client to meet their short, medium and long term needs, goals, is within their risk tolerance, and fits within your advice strategy. » use your professional judgment to determine which and how many alternative products you should consider » your licensee may have guidance on how many products you should consider » discuss with your client appropriate alternative products that you have considered and why these have been discarded » keep documentation of your consideration of the alternative product and refer to the availability of this documentation in your SOA. <p>Documentation</p> <p>Clearly document in your SOA your investigations, product comparisons, easy-to-read projections, and your advice recommendations to show how your advice and product recommendation is appropriate for your client given their circumstances.</p> <ul style="list-style-type: none"> ▶ Map your product investigations to your client needs analysis to clearly show your consideration of the existing product is based on your client's needs and circumstances. <p>In your client's file keep sound documentation of the analysis, projections and comparisons you have conducted on alternative products</p> <ul style="list-style-type: none"> ▶ In your SOA make reference to the alternative products and strategies you have considered and the availability of documentation if requested by your client ▶ Discuss with your client the alternative products you considered and why they were discarded. Document your discussion in your SOA.
<p>Other reasonable steps – complying with “clause (g)”</p>	<p>Section 961B(2)(g) requires you to “take any other step’ that, at the time the advice is provided, would reasonably be regarded as being in the best interests of your client, given the client’s relevant circumstances’.</p> <p>Paramount to ‘taking any other steps’</p> <p>There is no black and white answer with how to comply with ‘clause (g)’.</p> <ul style="list-style-type: none"> ▶ The key is using your professional judgement to consider whether there are additional steps you should take to ensure your advice is in the best interests of your client. ▶ The words ‘at the time the advice is provided’ mean that this provision does not consider what may have been in the client’s best interests in hindsight, or at a time in the future after the advice has been provided. ▶ What you need to do to show that you have satisfied clause (g) varies depending on the surrounding circumstances. ▶ ASIC suggests you should apply your professional judgement to the following 4 elements to take ‘other steps’ to ensure your advice is in your client’s best interest. <ul style="list-style-type: none"> » Remember, exercising professional judgment can be very subjective so it is important to document your considerations and how they are linked to your client’s needs. <p>Start with a professional client engagement – explain the scope of your advice</p> <p>Utilise the client needs analysis to set the ground work to “take any other step” from the commencement of your advice relationship with your client :</p> <ul style="list-style-type: none"> ▶ Analyse client information ▶ Identify and map the short, medium and long term financial planning needs of your client

Advice Process	For your consideration
	<ul style="list-style-type: none"> ▶ Clearly identify the appropriate subject matter and scope of your advice to meet your client's needs over the short, medium and long term. ▶ Explain clearly to your client the advice service that is and is not being provided ▶ Ensure you clearly document your client's needs and the scope of your advice service to demonstrate how it links to your client's needs. ▶ Consider documenting your discussion with your client. <p>Clearly identifying and documenting what your advice will and will not cover based on your client's short, medium and long term goals and personal circumstances, will demonstrate that you have taken other steps to identify, consider and inform your client of additional financial planning needs.</p> <p>Advice strategy must come first</p> <p>ASIC considers the provision of a strategy (rather than a stand-alone product recommendation) as a key proof point that you have 'taken other steps' to ensure your advice is in your client's best interest.</p> <p>Providing your client with a clear advice strategy is fundamental to meeting your Code obligations and must come before any consideration or recommendation regarding a financial product.</p> <ul style="list-style-type: none"> ▶ Identify appropriate advice strategies that address your client's prioritised needs, achieves their objectives and is compatible with your client's appetite for risk and capacity to tolerate the risk of capital loss ▶ Questions to ask when selecting a strategy include: <ul style="list-style-type: none"> » does the proposed strategy secure your client's current financial position? » are there any changes you can make to your client's current position to improve their ability to achieve their goals? » what assumptions underlie the proposed strategy and are they reasonable? » does the strategy genuinely reflect your client's needs, objectives and intentions, values and attitudes, risk tolerance and financial circumstances? » does the strategy address the issues or problems your client may have? » will the strategy definitely achieve your client's objectives, or is this only a probable outcome? ▶ Clearly explain and document how your advice strategy addresses your client's needs and will enable them to meet their objectives ▶ Remember, there may be more than one strategy that may meet your client's needs so it is important to document your considerations of how your recommended strategy(s) is linked to your client's needs. <ul style="list-style-type: none"> » use your professional judgment to determine which and how many alternative strategies you should consider » consider your competing client's needs when determining the strategy which is in the best interest of your client » your licensee may have guidance on how many strategies you should consider » discuss with your client appropriate alternative strategies that you have considered and why these have been discarded » keep documentation of your consideration of the alternative strategies and refer to the availability of this documentation in your SOA.

Advice Process	For your consideration
	<p data-bbox="491 338 895 360"><u>Providing product recommendations</u></p> <p data-bbox="491 378 1374 483">If your advice includes a product recommendation, ASIC considers the provision of related strategic recommendations that benefits your client, to be a key measure in complying with clause (g). The FPA Code would consider the strategy should be identified before the product recommendation.</p> <ul data-bbox="579 501 1430 808" style="list-style-type: none"> <li data-bbox="579 501 1430 555">▶ Consider product options that may fit within your advice strategy to achieve your client's objectives and address their needs <li data-bbox="579 568 1430 647">▶ Discuss how your product recommendation is consistent with and fits within this strategy to help your client address their needs, objectives and priorities over the short, medium and long term <li data-bbox="579 660 1430 714">▶ This may include a single strategy, multiple strategies or no change to your client's current course of action <li data-bbox="579 728 1430 808">▶ Ensure you clearly explain the risks of your strategy, the product features, and how your recommended product will enable your client to achieve their objectives. <p data-bbox="491 826 636 848"><u>Client review</u></p> <p data-bbox="491 866 1382 920">Recommend to your client, and in your SOA, the need for your client to review your advice:</p> <ul data-bbox="579 938 1430 1341" style="list-style-type: none"> <li data-bbox="579 938 1430 1016">▶ Discuss with your client the dynamic nature of financial planning that may require update or changes to your advice if there are changes in your client's circumstances or the economic environment <li data-bbox="579 1030 1430 1108">▶ Explain how a change in circumstances and the economic environment can lead to a change in your client's needs, impact on your client's risk tolerance and appetite, or the appropriateness of your advice recommendations <li data-bbox="579 1122 1430 1176">▶ Ensure your client understands the need and commits to adequately reviewing their situation (either themselves or by you) <li data-bbox="579 1189 1430 1341">▶ Recommend to your client an appropriate review period based on their circumstances and your advice recommendations. <ul style="list-style-type: none"> <li data-bbox="616 1263 1430 1341">» the review period may vary depending on your advice recommendations, the volatility of any investment returns and the likelihood of a change in your client's circumstances. <p data-bbox="491 1359 652 1382"><u>Further advice</u></p> <p data-bbox="491 1400 1401 1476">Offer (and document) to provide advice on your client's financial planning needs that you have identified in your advice process which may not be covered in your current advice.</p>

2. Ensuring your advice is appropriate for your client

The best interest duty in s961B and the appropriateness obligations in s961G are intrinsically linked.

Fundamental to ensuring your advice is appropriate for your client is ensuring your advice inquiries and investigations, strategy and recommendations satisfy your client's relevant circumstances. (See Client Circumstances section of 1 Best Interest Duty on page 17 for further information.)

ASIC's key measure of 'appropriate' is that your client is likely to be in a 'better position' if they follow your advice. See:

- ▶ Corporations Act – s961G – Resulting advice must be appropriate to the client
- ▶ ASIC Regulatory Guide RG175.337-344
- ▶ FPA Practice Standards 1, 2, 3, 4 and 7 of the FPA Code of Professional Practice

Advice Process	For your consideration
Client in a better position	<p>ASIC will measure whether the advice you provide is likely to leave your client in a better position to determine if you have provided appropriate advice (see RG175.224 – 175.231).</p> <p>Consider existing strategy and investments</p> <ul style="list-style-type: none"> ▶ Detail the position your client would be in if they <u>do not</u> follow your advice. ▶ Map back to your client needs analysis. <ul style="list-style-type: none"> » Would your client be able to meet their short medium and long term needs and goals by continuing their current action? » If not, state why not (eg. too high risk; no saving's strategy; etc). » What is needed to put them on track? » If the current strategy does meet your client's needs, and you recommend an alternative strategy, you must clearly document your reasons. ▶ Clearly document in your SOA your assessment and consideration of your client's current strategy against your client's goals, objectives and needs over the short, medium long term. <ul style="list-style-type: none"> » Use the Client Needs Analysis to assist with your documentation. <p>Client education and financial capability</p> <p>Explain and clearly document if and how your advice and interactions with your client have:</p> <ul style="list-style-type: none"> ▶ improved your client's understanding of their financial position ▶ aligned their financial position with their appetite for risk ▶ reassured your client that that they do not need to change their strategy or product holdings as a result of a review; or ▶ increased their confidence to spend, donate or invest their money. <ul style="list-style-type: none"> » This could require documenting conversations with your client that demonstrate the above improvements in your client's understanding.
Your authorisation	<p>If none of the financial products you are authorised to advise on are appropriate for your client, you must not recommend that your client take any action in relation to a financial product.</p> <ul style="list-style-type: none"> ▶ Advise your client that you are not authorised to provide such advice.

3. Advice warning

It is vital to use your professional judgement when determining whether your client has provided all relevant information needed for you to provide advice that meets their needs and is in their best interest.

The best interest duty requires you to make reasonable inquiries to obtain complete and accurate information that relates to your client's circumstances. You are also required to warn your client if any advice you are providing is based on incomplete or inaccurate information. See:

- ▶ Corporations Act – s961H – give a warning
- ▶ ASIC Regulatory Guide RG175.357-362
- ▶ FPA Practice Standards 1 and 7 of the FPA Code of Professional Practice. Particularly see PS 7.4 Professional judgement.

Advice Process	For your consideration
<p>Professional Judgement</p>	<p>Identifying incomplete information</p> <p>Use the Client Needs Wheel to clearly identify the scope and subject matter of the advice from the outset and to help determine the information you need .</p> <ul style="list-style-type: none"> ▶ Conduct your initial fact find ▶ Assess whether you have all the information that is relevant to enable you to analyse your clients circumstances and conduct a client needs analysis ▶ Identify any additional information you may need from your client ▶ Avoid using assumptions to identify client needs or compile projections. <p>Professional Judgement</p> <p>If your client does not provide you with personal information that is vital to your ability to identify their circumstances and provide advice, such as income and living expenses, use your professional judgement to determine if you can provide advice that is in your client's best interest without your client's information.</p> <ul style="list-style-type: none"> ▶ If you provide advice to your client without such pertinent information, is there a risk it could put your client in a worse (not better) position? ▶ Without this information, are you at risk of providing advice that is inappropriate or inaccurate? ▶ Should you decline the opportunity to provide advice to your client without the pertinent information? <p>Advice Options</p> <p>If your client continues to decline to provide such information, use your professional judgement and consider your options:</p> <ul style="list-style-type: none"> ▶ Transaction only service (no advice), if appropriate ▶ Decline advice. <p>You should be transparent with your client.</p>
<p>Giving a warning</p>	<p>You must warn your client if the advice you provide is based on incomplete or inaccurate client information.</p> <ul style="list-style-type: none"> ▶ Your advice warning must include: <ul style="list-style-type: none"> » The information that is missing that may be relevant to your client's circumstances. » Why this information is important to ensuring the advice is appropriate to your client and in your client's best interest.

Advice Process	For your consideration
	<ul style="list-style-type: none"> ▶ Inform your client of what you can and cannot do based on the limited information they have provided. For example: <ul style="list-style-type: none"> » You cannot provide specific personal advice without understanding their current circumstances. » Any advice provided may not be right for them and may put them in a worse position as it is not based on their circumstances. » You cannot ensure your advice will achieve their goals as you do not know their current situation.
Documenting client discussions and advice warning	<p>You should document your discussions with your client and your professional decisions in relation to the adequacy of the information provided by your client.</p> <ul style="list-style-type: none"> ▶ Documenting your discussions with your client will show that you have made reasonable enquiries to obtain the relevant information. ▶ Did you proceed with the advice or other service? ▶ Document reasons.

4. Prioritise your client's interests

The requirement to prioritise your client's interest relates to identifying and managing any conflicts you and related parties may have in relation to the advice you are providing to your client. See:

- ▶ s961J - Conflicts priority rule
- ▶ ASIC Regulatory Guide RG175.365-386
- ▶ Practice Standards 1 and 7 of the FPA Code of Professional Practice. Particularly consider PS 7.5 *Conflicts of Interest and Prioritisation*.

Advice Process	For your consideration
Identify your conflicts of interest	<p>Identify, list and include in your SOA, any conflicts you and related parties (to the provision of your advice) may have with your client's interests.</p> <ul style="list-style-type: none"> ▶ Relevant FSG and PDS disclosure documents may assist you in identifying conflicts ▶ Consider who is likely to benefit from you providing advice to your client ▶ Identify how you or a related party is likely to benefit – financially for example (including dollar amount if there is a quantifiable financial gain).
Self-interest conflicts	<p>Identifying your self-interest with each client relationship is key to meeting the conflict priority rule and your professional obligations in the FPA Code.</p> <ul style="list-style-type: none"> ▶ Consider your own personal bias and how these may impact on your ability to provide objective advice to your client <ul style="list-style-type: none"> » for example, if you favour a particular class of product or investment and whether this conflicts with your client's needs or risk appetite. ▶ Consider whether you have the competencies and experience to meet the needs of your client <ul style="list-style-type: none"> » for example, a client requires advice on a product that you are either not trained or sufficiently experienced to provide.
Related parties	<p>Related parties who may benefit from your advice could include your employer, licensee, or authorised representative overseeing your advice, or an associate of such a party</p> <ul style="list-style-type: none"> ▶ A common conflict arises when a licensee insists your client be changed to the licensee's preferred platform for commercial reasons. This may be inconsistent with your duty to recommend suitable products and service to your client, and may not meet your client's needs ▶ Advise your client of this conflict and clearly document your discussion in your SOA.
Putting your client's interest first	<p>If you identify a conflict, you must put your client's interest ahead of your own interest or that of a relevant third party.</p> <p><u>Conflicts impacting on the provision of advice in client's best interest</u></p> <ul style="list-style-type: none"> ▶ If the cost of providing the advice your client needs is excessive relevant to your client's financial resources, you should decline to provide the advice to your client ▶ If the type of advice you provide, or are authorised to provide, prevents you from developing relevant and suitable strategies and recommendations for your client, you should decline to provide the advice ▶ If your ability to evaluate or recommend products, such as your client's existing product or other product suitable for your client, is restricted by your licensee or employer, you should decline to make or implement advice recommendations.

Advice Process	For your consideration
	<ul style="list-style-type: none"> ▶ If you or a related party hold a direct or indirect material interest in a product or service, you should avoid recommending the product unless it is appropriate for your client and meets their needs and goals, and is clearly in your client's best interest to do so ▶ You must not recommend a product or service of a related party to create extra revenue for you, your licensee or another related party, where additional benefits for the client cannot be clearly demonstrated. <p>Approved product list (APL)</p> <ul style="list-style-type: none"> ▶ If you use an APL that only has products issued by a related party on it, you must not recommend a product on the APL unless you can clearly show that it is in your client's interests to recommend that product rather than another product with similar features and costs <ul style="list-style-type: none"> » consider benchmarking the product on your APL 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 and compare like with like. <p>(See product research and considerations section under <i>1. Best interest duty</i> on page 21 for further information)</p> <ul style="list-style-type: none"> ▶ It is vital to demonstrate, and document, that such a recommendation is in your client's best interest and is appropriate for your client's circumstances. <p>Advice service</p> <ul style="list-style-type: none"> ▶ You must provide a level of service commensurate with your client's needs and must not 'over-service' the client to generate more remuneration for you or a related party. For example: <ul style="list-style-type: none"> » avoid recommending an unduly complex strategy if your client is unlikely to seek ongoing advice » consider recommending strategic advice solutions relevant to the client's situation, such as advice on debt reduction, estate planning and/or Centrelink benefits, etc, where appropriate, even if this means the client is less likely to need financial advice in the future. <p>Declining advice</p> <ul style="list-style-type: none"> ▶ If you are unable to prioritise your client's interests ahead of yours or those of a related party, you should not provide the advice to your client.
Important points to remember	<p>As each client's circumstances, needs and financial situation is unique, the conflicts you may have may also be unique to that client.</p> <ul style="list-style-type: none"> ▶ Remember to review your identified conflicts for each client.
Documentation and disclosure	<ul style="list-style-type: none"> ▶ You cannot comply with the conflicts priority rule merely by disclosing a conflict of interest or getting your client to consent to a conflict ▶ You must clearly explain and document all conflicts of interest you or third parties may have in relation to the advice you are providing to your client ▶ Document how your advice meets your client's goals in line with the priorities identified in your needs analysis. This will assist in demonstrating that you have put your client's interests ahead of your own ▶ If there is a conflict, you must document the reasoning behind any recommendation that the client acquire new financial products or increase their interest in an existing product, where this advice would benefit you or a related party.

Documenting your advice

Documenting your advice is key to demonstrating to your client and others that you are acting in your client's best interest, providing advice that is appropriate for your client, and puts your client's interests first.

Your SOA should enable anyone reading it to easily understand and see how your advice process, research and considerations, strategy and recommendations, put your client's interests ahead of your own and are based on your client's circumstances. The best way to ensuring your SOA clearly demonstrates you are acting in the best interest of your client is to tailor your documentation to each client.

Best interest requirement For your consideration	
Best Interest Duty - s961B	<p>A. Client circumstances</p> <p>To clearly show your client your understanding of their circumstances, include in your SOA:</p> <ul style="list-style-type: none"> ▶ Details of your clients current circumstances <ul style="list-style-type: none"> » Current income and income required in retirement if applicable » Financial position » Insurances » Wills and Powers of Attorney » Discharge / Resignation / Retirement entitlements ▶ A list of all the relevant information provided by your client ▶ Information you have derived from discussions with your client, such as investment preferences, appetite for risk ▶ Include the your completed client needs analysis detailing your client's short, medium and long term goals ▶ Environmental factors which may influence your advice ▶ Your client's ability to tolerate risk ▶ Life events that your client may have experienced or seek to achieve ▶ Financial literacy and behavioural considerations you have identified through your inquiries ▶ Specific client circumstances such as those required when recommending a financial product with an investment component (see client circumstances section in 1 Best interest duty on page 21 for further detail) ▶ Other client information gained through your inquiries ▶ Client information you believe to be inaccurate or incomplete. <p>B. Reasonable enquiries to gain client information</p> <p>Document in your SOA your discussion with your client requesting information and regarding the implications of your client not providing relevant information.</p> <p>C. Client needs, goals and objectives</p> <p>Clearly document in your SOA your client's needs, goals and objectives using the Client Needs Analysis.</p> <p>D. Scope and subject matter of your advice</p> <p>Detail what you will and will not be considering in your advice to your client – the scope of your advice.</p>

Best interest requirement For your consideration

Detail what you will and will not be considering in your advice to your client – the scope of your advice.

- ▶ For example, your advice may focus only on your client's short term goals.
- ▶ However, identifying and documenting medium and long term goals will demonstrate 'taking any other steps' under clause (g)
 - » Include in the table medium and long term goals however clearly state in the scope of your advice that these will not be considered at this time, for example

E. Your competency

Include in your adviser profile and/or your FSG your authorisation, licensee details, education and experience, professional membership and the professional services you offer your clients.

F. Product research and considerations

Clearly document in your SOA your investigations, product comparisons, easy-to-read projections, and your advice recommendations to show how your advice and product recommendation is appropriate for your client given their circumstances.

- ▶ Map your product investigations to your client needs analysis to clearly show your consideration of the existing product is based on your client's needs and circumstances.

In your client's file keep sound documentation of the analysis, projections and comparisons you have conducted on alternative products

- ▶ In your SOA make reference to the alternative products and strategies you have considered and the availability of documentation if requested by your client
- ▶ Discuss with your client the alternative products you considered and why they were discarded. Document your discussion in your SOA.

If you are recommending your client change products, it is vital to show:

- ▶ How your recommended product fits with:
 - » your client's risk appetite
 - » your Client Needs Analysis over the short, medium and long term
 - » how it will enable your client to achieve their goals
 - » your advice strategy, AND
- ▶ How your client's existing product does not help your client achieve their goals
- ▶ Ensure your client truly understands the features, risks, benefits, disadvantages and costs of the products you recommend
- ▶ Discuss with your client and document the following points of the product you recommend and how these better meet their needs and circumstances than their existing product:
 - » risks – the amount of money they could lose – are they comfortable with this risk? What are the alternatives?
 - » features – services, investment options, additional offerings within the product, etc
 - » benefits – higher returns, strength of product provider
 - » disadvantages – may lose life insurance
 - » costs – fees.

Best interest requirement	For your consideration
	<ul style="list-style-type: none"> ▶ Map it to your client needs analysis to show that your product research and considerations were based on your client's circumstances <p>Where the advice relates to products with an investment component, relevant information may include the client's:</p> <ul style="list-style-type: none"> ▶ Need for capital growth or regular income ▶ Desire to minimise fees and costs ▶ Risk tolerance level, including risk of capital loss and risk of not producing expected benefits ▶ Need for liquidity ▶ Existing investment portfolio. <p>G. Other reasonable steps</p> <p>Utilise the Client Needs Analysis to set the ground work to "take any other step" from the commencement of your advice relationship with your client :</p> <ul style="list-style-type: none"> ▶ Document the short, medium and long term needs and objectives of your client <ul style="list-style-type: none"> » document which needs will be addressed in your current advice, and » recommend your client seek further advice that considers those client needs and objectives your current advice does not cover » clearly identifying and documenting what your advice will and will not cover based on your client's short, medium and long term goals and personal circumstances, will demonstrate that you have taken other steps to identify, consider and inform your client of additional financial planning needs. ▶ Clearly document your client's needs and the scope of your advice service to demonstrate how it links to your client's needs ▶ Consider documenting relevant discussions with your client in your SOA ▶ Document your advice strategy(s) (rather than a stand alone product recommendation) as a key proof point that you have 'taken other steps' to ensure your advice is in your client's best interest ▶ Clearly explain and document how your advice strategy addresses your client's needs and will enable them to meet their objectives <ul style="list-style-type: none"> » in your client's file, keep documentation of your consideration of the alternative strategies and refer to the availability of this documentation in your SOA ▶ Ensure you clearly explain the risks of your strategy and how it will enable your client to achieve their objectives ▶ Recommend to your client, and in your SOA, the need for your client to review your advice ▶ Offer (and document) to provide advice on your client's financial planning needs that you have identified in your advice process which may not be covered in your current advice.
<p>Appropriate advice – s961G</p>	<p>Key to demonstrating that your advice is appropriate for your client is to document how your research and considerations, strategy and recommendations are based on your client's circumstances.</p> <ul style="list-style-type: none"> ▶ See Client Circumstances section above for documentation considerations.

Best interest requirement	For your consideration
	<p>You must document how your strategy and recommendations will put your client in a better position if they follow your advice.</p> <ul style="list-style-type: none"> ▶ Detail the position your client would be in if they do not follow your advice. Map back to your client needs analysis ▶ If the current strategy does meet their needs, and you recommend an alternative strategy, you must clearly document your reasons ▶ Clearly document in your SOA your assessment and consideration of your client's current strategy against your clients goals, objectives and needs over the short, medium long term. <p>Explain and clearly document if and how your advice and interactions with your client have:</p> <ul style="list-style-type: none"> ▶ Improved your client's understanding of their financial position ▶ Aligned their financial position with their appetite for risk ▶ Reassured your client that that they do not need to change their strategy or product holdings as a result of a review ▶ Increased their confidence to spend, donate or invest their money ▶ This could require documenting conversations with your client that demonstrate the above improvements in your client's understanding.
Advice warning – s961H	<p>You should document your discussions with your client and your professional decisions in relation to the adequacy of the information provided by your client.</p> <ul style="list-style-type: none"> ▶ Documenting your discussions with your client will show that you have made reasonable inquiries to obtain the relevant information ▶ Did you proceed with the advice or other service? ▶ Document reasons.
Prioritising your clients interest – s961J	<ul style="list-style-type: none"> ▶ You cannot comply with the conflicts priority rule merely by disclosing a conflict of interest or getting your client to consent to a conflict ▶ You must clearly explain and document all conflicts of interest you or third parties may have in relation to the advice you are providing to your client ▶ Document how your advice meets your client's goals in line with the priorities identified in your needs analysis. This will assist in demonstrating that you have put your client's interests ahead of your own ▶ If there is a conflict, you must document the reasoning behind any recommendation that the client acquire new financial products or increase their interest in an existing product, where this advice would benefit you or a related party.
Client engagement and communication	<p>You provide financial advice and assistance to your client every day. You also spend the majority of your time thinking about financial advice, financial products, investment options, and the ins and outs of the financial services in great detail. It is therefore easy to overlook the following considerations that can greatly improve interactions, communication and engagement with your client.</p> <ul style="list-style-type: none"> ▶ Do not assume a level of knowledge of your client ▶ Start with the basics ▶ Only use technical terms where necessary ▶ Avoid using jargon, acronyms or legal compliance driven explanations

Best interest requirement	For your consideration
	<ul style="list-style-type: none"> ▶ Use language that relates to your clients circumstances in all your interactions and communication with your client ▶ Separate instructions from explanations <ul style="list-style-type: none"> » It is important that you explain issues concerning the advice being provided, however, state the instruction or action first, and then the explanation. ▶ Keep the instructions positive. They are more likely to be read than negative ones ▶ Use dollars not percentages where possible as they are easier for your client to relate to their own circumstances: <ul style="list-style-type: none"> » For example, if you invest in.....there is a risk you could lose \$XXX ▶ Consider the financial literacy, understanding and concerns of all the parties affected by your advice in your communications and interactions with your clients.
Risk profiling	<p>Risk profiling should consider two levels:</p> <ul style="list-style-type: none"> ▶ your client's understanding of and comfort about the risks of losing money, and ▶ the capacity of your client's financial resources to tolerate the risk of losing money. ▶ Do not just rely on online risk profiling tools and applications ▶ Do not assume your client's risk profile based on past investments ▶ Discuss different types of investments and the associated risk with your client to gain a deeper understanding of the options they don't like and why. This will provide a true insight into your client's risk appetite. <ul style="list-style-type: none"> » talk about the pros and cons of different types of financial strategies and products / investments to gain a sense of feedback from your client and a sense of the level of understanding and comfort your client may have to help determine your client's true appetite for risk. <ul style="list-style-type: none"> ○ for example, does your client feel comfortable and understand the risks of investing 40% of their assets in high risk allocation when they are nearing retirement? » ask your client what kind of investments they like and the kind of environment they like to hold them in. » consider the product features that the client particularly values » document your discussion to demonstrate your evaluation of your client's risk appetite ▶ Remember a client's risk appetite may vary over time and be influenced by changes in their circumstances, the economic environment, or even media reports <ul style="list-style-type: none"> » discuss such influencing factors and the any associated or perceived risks to your client's advice strategy and financial position, to identify any changes to your client's risk appetite » explain how any changes in the economic environment could impact your client's strategy or investments » this should be done in your client review and as necessary » review your advice strategy should your client's risk appetite change » document any changes to either your client's risk or your advice.

Best interest requirement For your consideration	
Projections	<p>Projections should provide meaningful information for client and consider longevity to give your client an insight into any potential shortfalls that could eventuate.</p> <ul style="list-style-type: none"> ▶ Potential shortfalls identified in your projections should be clearly explained with your client, including the implications for and impact on achieving their goals <ul style="list-style-type: none"> » consider whether your clients need to revise their goals. ▶ Discuss with your client options to cater for potential shortfalls in the short and long term ▶ Make sure your charting of projections is meaningful and understandable to your client both in your discussion and documentation ▶ Clearly document in your SOA: <ul style="list-style-type: none"> » potential shortfalls identified in your projections » the implications for your client's and how it impacts on achieving their goals » the related discussions you have with your clients » your clients understanding of the shortfalls » any changes to the strategy as a result of the shortfalls » how your client plans to cater for any potential shortfalls » a timeframe for a review of your advice given the potential shortfall to keep your client on track with their goals.
File notes	<p>In reviewing ASIC reports and case law, one of the biggest factors which helps in defending financial planning cases is having detailed contemporaneous file notes.</p> <p>By recording the conversations and the client's reactions to discussions, trade-offs, risks and recommendations at the time meetings occurred, it is easier for an independent reviewer to understand the process you went through when providing advice.</p> <p>A good test is to ask yourself whether someone reading the clients file can understand how you moved from the client's instructions to formulating goals and objectives agreed with the client and how this is then translated into strategic and/or product recommendations.</p>
Ongoing communications	<p>Another big issue which cause many cases against professionals (more generally, but applicable to financial planners) is communication. Where your client is fully and appropriately informed and there is ongoing communication, clients are much less likely to become disgruntled and bring a claim against you.</p> <p>While communication doesn't need to be constant, regular and specific updates about the tracking of the implementation of the client's financial plan will make them more comfortable that their plan is hand and you are keeping an eye on how things are going. It also offers an opportunity for the client to inform you of changes to their circumstances which might have an effect on them achieving their goals and objectives.</p>

Where to go for more information

Best Interest Duty obligations in the law:

- ▶ Corporations Act 2001
(http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/)
- ▶ Corporations Regulations
(http://www.austlii.edu.au/au/legis/cth/consol_reg/cr2001281/)
- ▶ Explanatory Memorandum
(<http://www.comlaw.gov.au/Details/F2012L01545/Explanatory%20Statement/Text>)

ASIC Guidance

Please see ASIC's website for the following guidance and additional information (<http://www.asic.gov.au/regulatory-resources/>):

- ▶ ASIC RG 90 Example Statement of Advice: Scaled advice for a new client
- ▶ ASIC RG175 Licensing: Financial product advisers—Conduct and disclosure (including guidance on the Best Interest Duty obligations)
- ▶ ASIC RG244 Giving information, general advice and scaled advice
- ▶ ASIC RG245 Fee Disclosure Statements
- ▶ ASIC RG246 Conflicted remuneration

ASIC Reports

Please see ASIC's website for the following Reports (<http://www.asic.gov.au/regulatory-resources/find-a-document/find-a-regulatory-document/?filter=Report&find=all>):

- ▶ REP 562 Financial advice: Vertically integrated institutions and conflicts of interest
- ▶ REP 515 Financial advice: Review of how large institutions oversee their advisers
- ▶ REP 499 Financial advice: Fees for no service
- ▶ REP 413 Review of retail life insurance advice
- ▶ REP 407 Review of the financial advice industry's implementation of the FOFA reforms
- ▶ REP 377 Review of advice on retail structured products

Relevant Case Law

While case law since 2013 in regards to the best interest duty have been limited, the following cases provide some level of court interpretation.

- ▶ ASIC v Wealth & Risk Management Pty Ltd [2017] FCA 477
(<http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2017/2017fca0345>)

Respondents found to be carrying on financial services business without an AFSL, misleading and deceptive conduct, unconscionable conduct. Representatives failed to comply with S961B.

- ▶ ASIC v Wealth & Risk Management Pty Ltd (No 2) [2018] FCA 59 Federal Court – VID 238 / 2017
(<https://static1.squarespace.com/static/52b5f387e4b08c16746b6b70/t/5a87b85fe2c4831ac909d677/1518844001568/ASIC+v+WRM+%28No+2%29+%5B2018%5D+FCA+59+-+judgment+%281%29.pdf>)

Respondents found to have failed to comply with S961B in the services provided. Authorised representative ordered to pay \$650,000.

- ▶ ASIC v NSG Services Pty Ltd [2017] FCA 345
(<http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2017/2017fca0345>)

\$1 million civil penalty imposed on AFSL for breaches of the best interests duty.

ASIC v Westpac Securities Administration Ltd – NSD 2204 / 2016

ASIC has commenced civil penalty proceedings in the Federal Court against Westpac subsidiaries Westpac Securities Administration Limited (WSAL) and BT Funds Management Limited (BTFM) for a number of contraventions, including failures of the ‘best interests duty’ introduced under the Future of Financial Advice reforms.

The trial concluded with closing submissions on 16 February 2018. Judgment has been reserved – Federal Court

ASIC v Financial Circle Pty Ltd [2018] FCA 2

The Federal Court of Australia (FCA) has granted the interlocutory injunction sought by the Australian Securities and Investments Commission against a financial services licensee (licensee). The FCA found that the licensee’s website failed to disclose the fact that the provision of a loan was conditional upon the applicant obtaining financial advice from licensee and implementing that advice with corresponding fee from their superannuation fund.

- ▶ New South Wales Court of Appeal’s decision in Commonwealth Financial Planning Limited v Couper [2013] NSWCA 444.
([http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWCA/2013/444.html?stem=0&synonyms=0&query=title\(Commonwealth%20Financial%20Planning%20Ltd%20and%20Couper%20\)\)](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWCA/2013/444.html?stem=0&synonyms=0&query=title(Commonwealth%20Financial%20Planning%20Ltd%20and%20Couper%20))))

The advice given in this case pre-dates the FoFA Reforms, but the Court made numerous references to the best interests duty in the decision.

FPA Professional Standards

Please see the FPA website for the FPA Code of Professional Practice and other guides (<https://fpa.com.au/professionalism/fpa-code-of-professional-practice/>).

FPA member tools

A guide to Bulletproof financial planning, FoFA webinar, sample Fee Disclosure Statement, FAQs, other FoFA tools, and other member code guidance – visit the Member Centre on the FPA website

https://portal.fpa.com.au/Web/Resources/Web/Resource_Search.aspx?hkey=722f18c9-da35-4a83-b6ec-facba59a90f6



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