ASIC
Australian Securities & Investments Commission

Appendix 3 to Report 515: Checklist—Reviewing personal advice as part of an adviser audit

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Disclaimer

This document is a reproduction of Appendix 3 to Report 515 *Financial advice: Review of how large institutions oversee their advisers* (REP 515).

REP 515 does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in REP 515 are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Appendix 3: Checklist—Reviewing personal advice as part of an adviser audit

296 Table 12 sets out a checklist of issues that all advice licensees and compliance consultants should consider when reviewing personal advice as part of an adviser audit to determine whether the adviser has demonstrated compliance with the best interests duty and related obligations.

297 The checklist covers the existing obligations in the Corporations Act, as well as additional considerations for giving good quality advice. It is based on our guidance in Regulatory Guide 175 *Licensing: Financial product advisers—Conduct and disclosure* (RG 175) and Regulatory Guide 244 *Giving information, general advice and scaled advice* (RG 244).

298 This is not a complete checklist of issues to consider when reviewing personal advice. A licensee may want, or need, to include additional questions and considerations, or tailor these matters according to the nature of its particular advice business. A licensee will also need to assess, in its audit process, an adviser's compliance with other legal obligations, in addition to the best interests duty and related obligations.

Other resources

299 In addition to the checklist in Table 12, ASIC has extensive regulatory guides and information for advice licensees to refer to when reviewing customer files and advice:

(a) Information Sheet 182 *Super switching advice—Complying with your obligations* (INFO 182);

(b) Information Sheet 205 *Advice on self-managed superannuation funds: Disclosure of risks* (INFO 205);

(c) Information Sheet 206 *Advice on self-managed superannuation funds: Disclosure of costs* (INFO 206);

(d) Regulatory Guide 90 *Example Statement of Advice: Scaled advice for a new client* (RG 90);

(e) Regulatory Guide 175 *Licensing: Financial product advisers—Conduct and disclosure* (RG 175);

(f) Regulatory Guide 244 *Giving information, general advice and scaled advice* (RG 244);

(g) Report 337 *SMSFs: Improving the quality of advice given to investors* (REP 337)—in particular, Section C; and

(h) Report 413 *Review of retail life insurance advice*—in particular, Section D and the appendix 'Life insurance advice checklist' (REP 413).

Table 12: Issues to consider when reviewing personal advice as part of an adviser audit

Key issue	Audit questions	Considerations
Acting in the best interests of the customer: s961B(1)	Has the adviser acted in the best interests of the customer? Why/Why not? Did the customer file pass or fail this step?	Advisers must act in the best interests of their customers. As a result, a reasonable adviser would believe that the customer is likely to be in a better position if they follow the advice, than at the time the advice is provided. See RG 175.224–RG 175.231, including Examples 1–6, for further information. Advice provided by an adviser who has complied with the best interests duty is likely to leave the customer in a better position if they follow the advice. 'Better position' depends on the circumstances and includes: • the position the customer would be in if they did not follow the advice; • the facts at the time the advice is provided; • the subject matter of the advice sought by the customer (both explicit and implicit)—that is, whether the scope of the advice is consistent with the customer's relevant circumstances and the subject matter of the advice sought (and why/why not); • whether the advice balances the need for strategic advice and/or financial product advice; • where relevant, the product features that the customer particularly values—provided that the customer understands the cost of, and is prepared to pay for, those features; and • whether the benefits the customer receives as a result of the advice are more than trivial (and why/why not). If an advice model produces a 'one-size-fits-all' outcome (i.e. the processes do not allow each customer's relevant circumstances to be taken into account, or result in advice that does not reflect the customer's relevant circumstances), it will be difficult to demonstrate that the best interests duty is being complied with. When assessing whether the best interests duty has been complied with, advice reviewers should assess: • which aspects of the advice were in the customer's best interests; • which aspects of the advice were not in the customer's best interests; • whether a reasonable adviser assessing the advice, at the time it was given, would believe that the customer would be likely to be in a better position if the customer followed the advice; • whether the advice took into account and reflected the customer's relevant circumstances; • whether the scope of advice was consistent with the customer's relevant circumstances and the subject matter of the advice sought; and • whether the advice balanced the need for strategic advice and/or financial product advice. Deficient switching advice (see below) may lead to the customer file and advice failing s961B(1).

Key issue	Audit questions	Considerations
Identifying the customer's objectives: s961B(2)(a) Note: This is a safe harbour step.	Did the adviser identify the objectives of the customer that were disclosed to the adviser by the customer through instructions? Why/Why not? Did the customer file pass or fail this step?	Personal advice should ensure that a customer's objectives are specific, measurable and prioritised: see RG 175.218(c). These objectives may include, but are not limited to: • cash flow management and budgeting; • debt reduction or repayment; • building savings and wealth; • superannuation advice; • planning for retirement; • personal insurance advice; and • investment of a lump sum. The reasons or objectives that prompted the customer to seek advice should be clear and recorded in the customer's own words. Both the customer file and Statement of Advice (SOA) should clearly explain why the customer is seeking advice and the outcomes the customer wants to achieve. If a customer file and SOA are based on pre-determined or leading instructions, and questions from a 'fact find', this does not allow each customer's relevant circumstances to be taken into account and is likely to result in advice that does not reflect the customer's relevant circumstances.
Identifying the customer's financial situation and needs: s961B(2)(a) Note: This is a safe harbour step.	Did the adviser identify the financial situation and needs of the customer that were disclosed to the adviser by the customer through instructions? Why/Why not? Did the customer file pass or fail this step?	The adviser should identify, discuss and document all relevant aspects of the customer's financial situation and needs, such as: • their financial position (i.e. income, expenses, assets and liabilities); • their personal circumstances (i.e. age, relationship status and family situation); • their health status; • any foreseen changes to their personal or financial position (i.e. inheritance, home renovations, divorce, new baby, sale of business, retirement, redundancy, job or career changes); • any existing insurance arrangements (including insurance held within their superannuation fund); and • their insurance needs and the relative priority of those needs. The customer's financial situation and needs should be recorded in the customer file (e.g. in a fact find or file note summarising the conversation) and summarised concisely in the SOA to the extent that this information provides the basis of the advice given. Some of this information will merely provide context and background to the advice and does not need to be in the SOA.

Key issue	Audit questions	Considerations
Identifying the subject matter and scope of the advice sought by the customer: s961B(2)(b)(i) Note: This is a safe harbour step.	Did the adviser identify the subject matter of the advice sought by the customer and, where relevant, change the scope of the advice accordingly? Why/Why not? Did the customer file pass or fail this step?	A customer file and SOA should together demonstrate: • why the customer is seeking advice; • the subject matter and scope of the advice being provided; and • why the subject matter and scope are suitable for the customer and consistent with the customer's objectives, financial situation and needs. A customer file should also demonstrate that the subject matter of the advice sought was identified through a two-way process between the customer and the adviser. The scope of advice must not be reduced by the adviser to exclude critical issues that are relevant to the subject matter of the advice sought. Where the customer seeks to limit the scope of the advice, the adviser should decline to provide the advice if their ability to act in the customer's best interests is affected by the customer's instructions. Where the subject matter of the advice is limited in scope at the request of the customer, the adviser should carefully record this in the customer file, including the customer's reasons for the request. This should also be detailed in the SOA.
Identifying the customer's relevant circumstances: s961B(2)(b)(ii) Note: This is a safe harbour step.	Depending on why the customer is seeking advice, the adviser should exercise their judgement in identifying the customer's relevant circumstances, based on the information disclosed. Has this occurred? Why/Why not? Did the customer file pass or fail this step?	As part of identifying the customer's circumstances that are reasonably considered relevant to the subject matter of the advice sought, an adviser may need to make inquiries that are additional to those they would normally make. This is particularly important if the advice is relatively complex or if it is reasonably apparent that the customer has a low level of financial literacy. If the subject matter of the advice is revised as part of this process, this should be clear in the customer file and in the SOA, including why the revised subject matter is suitable and in the customer's best interests. The customer's relevant circumstances would normally encompass any matter that the customer indicates is important.

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Key issue	Audit questions	Considerations
Making inquiries where information is incomplete or inaccurate: s961B(2)(c) Note: This is a safe harbour step.	If it was reasonably apparent that information about the customer's relevant circumstances was incomplete or inaccurate, did the adviser make reasonable inquiries to obtain complete and accurate information? Why/Why not? Did the customer file pass or fail this step?	Where there is incomplete or inaccurate information (including inconsistent information) about the customer's relevant circumstances, the adviser should clearly demonstrate what steps they took to obtain or clarify information. Advisers should use their knowledge, skill and judgement to identify incomplete or inaccurate information that is required to provide the advice sought by the customer on that subject matter. In some cases, where the information is incomplete or inaccurate, the adviser should consider whether they should decline to provide advice.
Assessing the adviser's expertise: s961B(2)(d) Note: This is a safe harbour step.	Does the adviser have the expertise required to provide the advice sought by the customer on that subject matter? Why/Why not? Did the customer file pass or fail this step?	Advice reviewers should make an objective assessment about the competence and experience of the adviser. This includes consideration of the adviser's authorisations, education, experience and memberships as recorded on ASIC's financial advisers register. If the adviser is not trained or authorised to provide the advice sought by the customer on that subject matter, they should decline to provide the advice.

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Key issue	Audit questions	Considerations
Recommending a financial product: s961B(2)(e) Note: This is a safe harbour step.	Where a financial product is recommended, did the adviser conduct a reasonable investigation and assessment of the financial products that might meet the objectives and needs of the customer that would reasonably be considered as relevant to the advice on that subject matter? Why/Why not? Did the customer file pass or fail this step?	Before recommending that a customer acquire a financial product, we expect advisers to formulate the strategy that they are basing their advice on. In some cases, it is unlikely that a product recommendation would be in the customer's best interests, given the subject matter of the advice sought. For example: • a customer experiencing financial difficulty may need advice on how to manage their cash flow and reduce debt. If the customer is unwilling or unable to pay for this advice, consideration should be given to referring the customer to a financial counsellor; or • a customer whose existing superannuation and insurance products meet their needs and objectives may need advice to make no changes and continue what they are already doing. An adviser should consider the customer's existing financial products and whether the customer's needs and objectives can be met by retaining (or modifying) their existing financial products. An adviser must conduct a reasonable investigation into products that will meet the customer's needs and objectives. The level of inquiries will vary according to the complexity of the advice, including the financial products and strategies recommended. Complex financial products and strategies necessitate more extensive inquiries. Advisers can refer to investigations conducted by their AFS licensee or various service providers (e.g. research houses) to assist their own inquiries. However, product research does not take into account the customer's unique personal circumstances, objectives, and needs. The adviser is ultimately responsible for ensuring that the product is suitable for the customer, given their relevant circumstances. Note: Not all research is the same. For further information, see Regulatory Guide 79 *Research report providers: Improving the quality of investment research* (RG 79). In summary, a customer file should demonstrate: • whether it was reasonable to recommend a financial product, taking into account the reasons why the customer sought advice; • consideration of strategic advice that may form the basis of the financial product recommendations; • consideration and investigation of financial products, taking into account: – the customer's existing financial products; – financial products that might meet the customer's needs and objectives (including the recommended financial products); – a clear rationale about why the recommended financial products meet the customer's needs and objectives when compared with other products considered (including the customer's existing products); and – any research used by the adviser.

Key issue	Audit questions	Considerations
Making a recommendation to replace a financial product: s961B(2)(e) Note: This is a safe harbour step.	Where an adviser recommends that a financial product is replaced, did the adviser conduct a reasonable investigation and assessment of the financial products that might meet the objectives and needs of the customer that would reasonably be considered relevant to the advice on that subject matter? Why/Why not? Did the adviser consider and investigate the customer's existing products? Why/Why not? Did the customer file pass or fail this step?	Advice that recommends replacing one financial product with another (switching advice) must be in the customer's best interests. Advisers should carefully consider important risks to the customer. This is particularly important where an adviser recommends a switch of superannuation and/or insurance products, because this can have significant risks of lost benefits for a customer. In addition, a superannuation fund often contains insurance cover that should always be considered and investigated when providing switching advice. Once an adviser has established it is reasonable to recommend a financial product, before recommending a replacement product, the adviser must consider and investigate: • the customer's existing products; • the new financial products that the customer could potentially acquire or invest in; and • the new recommended products. Switching advice should: • be clear, concise and effective; • be easily understandable and enable the customer to make an informed decision; and • compare 'like-for-like' fees and features of existing and new products. When giving switching advice, an adviser must consider the advantages and disadvantages, including the costs and risks, of both the existing and new products. This obligation also applies if an adviser recommends that the customer redirects their superannuation contributions into a new superannuation fund, including an SMSF, or other product. Advice may leave the customer in a better position if there are overall cost savings for the customer that override the loss of any benefits. The overall cost savings must take into account all the circumstances, including the cost of the replacement product and the adviser's fees. Switching advice will generally not be in the customer's best interest if the adviser knows (or should have known) that: • the overall benefits likely to result from the replacement product would be lower than under the existing product, unless outweighed by overall cost savings; or • the cost of the replacement product is higher than the existing product, unless the replacement product better satisfies the customer's needs. Deficient switching advice may lead to the adviser failing the obligation to act in the customer's best interests (s961B(1)), satisfy the safe harbour step in s961B(2)(e), or provide appropriate advice (s961G).

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Key issue	Audit questions	Considerations
All judgements are based on the customer's relevant circumstances: s961B(2)(f) Note: This is a safe harbour step.	Has the adviser based all judgements made, in advising the customer, on the customer's relevant circumstances? Why/Why not? Did the customer file pass or fail this step?	An adviser must base all judgements made, in advising the customer, on the customer's relevant circumstances. This includes: • whether the scope of advice is suitable; • the extent of inquiries made into the customer's relevant circumstances (i.e. whether the adviser has identified and inquired about all of the customer's relevant circumstances); • the strategies and financial products investigated and assessed, including existing products; • the strategies and financial products recommended, including why the recommended strategies and products meet the customer's relevant circumstances, and are suitable and in the customer's best interests; • where relevant, how the customer should acquire financial products—for example: – whether personal insurance should be held through the customer's superannuation benefits (and why/why not); and – whether the customer's superannuation should be in an SMSF, industry fund or retail investor directed portfolio service (IDPS) platform (and why/why not); and • whether complying with the best interests duty means that the advice required is not product specific. We consider that, to satisfy s961B(2)(f), a reasonable adviser would believe the customer is likely to be in a better position if the customer follows the advice. In some cases, complying with the best interests duty will require an adviser to give the customer advice that is not product specific and does not result in replacing a financial product or acquiring a new financial product (e.g. a customer seeking to understand when they are able to retire).
Other reasonable steps: s961B(2)(g) Note: This is a safe harbour step.	Has the adviser taken any other step that, at the time the advice is provided, would reasonably be regarded as being in the best interests of the customer, given the customer's relevant circumstances? Why/Why not? Did the file pass or fail this step?	Advisers *may* need to undertake further steps, if they have not already done so—for example: • explain clearly to the customer the advice that is, and is not, being provided (see Section E of RG 244); • when recommending financial products, provide strategic recommendations that benefit the customer; and • offer to provide advice (or refer the customer to someone who can provide advice) on any other key issues identified by the adviser. Advisers must use their judgement in considering whether there are any other steps that need to be taken to ensure they comply with the best interests duty. *Example:* A customer seeks advice on obtaining life insurance only to cover new debt. In the course of providing this advice, the adviser determines that the customer is the single income earner for the customer's family and has no income protection cover. In this case, the adviser should bring this issue to the attention of the customer and offer to provide advice on this issue to the customer.

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Providing appropriate personal advice: s961G	Would it be reasonable to conclude that the advice is appropriate to the customer? Why/Why not? Did the customer file pass or fail this step?	A customer file and SOA should together demonstrate that the customer is likely to be in a better position if they follow the advice. When assessing whether the duty to provide appropriate advice has been complied with, advice reviewers should consider the following: • What were the customer's objectives? • Was each objective satisfied by the advice? Why/why not? • Which aspects of the advice were appropriate? • Which aspects of the advice were not appropriate? • Was the customer likely to be in a better position if they followed the advice (see RG 175.224–RG 175.231)? Deficient switching advice may lead to the adviser failing s961G.
Resulting advice based on incomplete or inaccurate information: s961H	Was the information about the customer's relevant circumstances, on which the advice was based, incomplete or inaccurate? If yes, was the customer given a warning that the advice was based on incomplete or inaccurate information? Why/Why not? Did the customer file pass or fail this step?	Advisers must make reasonable inquiries to obtain complete and accurate information about the customer's relevant circumstances. Personal advice may be provided if an adviser makes reasonable inquiries into the customer's relevant circumstances, even if the customer has not, in fact, provided all the information that the adviser has sought. If it is reasonably apparent, after reasonable inquiries have been made, that information about the customer's relevant circumstances, on which the advice is based, is incomplete or inaccurate, an adviser must warn the customer that: • the advice is, or may be, based on incomplete or inaccurate information relating to the customer's relevant circumstances; and • because of this, the customer should consider the appropriateness of the advice, taking into account their relevant circumstances, before acting on the advice.
Prioritising the customer's interests: s961J	Where there is a known, or reasonably apparent, conflict between the interests of the adviser and the customer, did the adviser prioritise the interests of the customer when giving the advice? Why/Why not? Did the customer file pass or fail this step?	Does the advice, product and/or service create additional revenue or some other form of benefit for the adviser, their advice licensee or another related party? • If yes, can additional benefits for the customer be demonstrated? • If yes, what are these additional benefits and how do they prioritise the interests of the customer? • Would a reasonable adviser without a conflict of interest have provided this advice? Why/why not? This information should be clear in the customer file. Any potential or actual conflicts of interest should be clearly set out in the SOA. Where appropriate, advisers should recommend solutions relevant to the customer's situation that are not product specific (e.g. advice on debt reduction, estate planning, and Centrelink benefits).

Source: ASIC