



Australian Securities and Investment Commission  
Level 7, 120 Collins Street,  
Melbourne VIC 3000

By email: [MortgageBrokerBID@asic.gov.au](mailto:MortgageBrokerBID@asic.gov.au)

### **ASIC Consultation Paper 327**

#### **Implementing the Royal Commission recommendations: Mortgage Brokers and the best interests duty**

##### **Background**

Mortgage Choice Limited (Mortgage Choice) is a publically listed company and holds an Australian Credit Licence number 382869. Mortgage Choice provides credit assistance to consumers nationally through its network of 510 authorised credit representatives. All credit representatives operate under the Mortgage Choice licence and are not authorised to hold their own Australian Credit Licence or be an authorised credit representative of another licence holder.

Mortgage Choice requires its credit representatives to provide credit assistance through the Mortgage Choice brand and in that respect operates as a branded Mortgage Broker and Aggregator.

Mortgage Choice welcomes the opportunity to provide feedback to ASIC on the draft Regulatory Guidance.

##### **Response to Consultation Paper**

In respect of the specific questions posed by ASIC in the Consultation Paper please refer to the attached document setting out our position in respect of each of the questions.

##### **General Comments in relation to Regulatory Guide 000 Mortgage Brokers: Best interest duty**

##### **Timing of implementation**

Given the rapidly evolving situation caused by the COVID-19 virus we request ASIC provide a 12 month 'no-action' position until 30 June 2021 in relation to any potential breaches of the Best Interest Duty (BID) or conflicted remuneration matters.

The above request is made on the following basis:

- a. The COVID-19 virus has resulted in significantly changed ways of working to maintain viability of all businesses including introduction of technology to allow remote working and liaising with customers;
- b. All mortgage brokers in the Mortgage Choice network are small businesses who are rightly concerned by uncertainty in the market;
- c. Mortgage Choice has been required to redirect technology resources to equip the business and our network with solutions to respond to the crisis;
- d. The training plan for our network Australia wide on the new obligations has been significantly impacted due to social distancing measures and on current information may only be facilitated by video link which does not provide the same level of engagement; and
- e. There is currently no certainty as to when the restrictions imposed by the government will be lifted, which does not allow for planning and implementation of the changes.

If ASIC were amenable to this we would request that industry be notified of this ASAP so that planning can occur and resources can be further diverted to support both our network and consumers during this difficult time.

#### **Clarification of Point in Time**

Whilst the draft regulatory guidance confirms that the BID is a point in time obligation it fails to clarify at which point the BID exists simply referring to when providing 'credit assistance'.

Whilst we agree that a mortgage broker should act in the best interest of a consumer throughout the entire journey it is our position that what is required in the assessment and recommendation stage is entirely different to what is required at the application stage.

The regulatory guidance should clarify that after an assessment/recommendation is made the obligation to ensure that the product is in the best interest of the consumer no longer applies during the application process. At this stage acting promptly on the instructions of the consumer ought be satisfactory evidence that the mortgage broker has acted in the consumers' best interest.

#### **Certain payments to Aggregators not conflicted**

We request that ASIC confirm that payments made to licensees which are not linked to volume (technology integration, education and training funds) are not conflicted remuneration. Where the financial support is provided direct to the mortgage broker then we agree that this could create a conflict and ought be considered.

As part of the commercial arrangements that exist Lenders provide financial support to aggregators which are not linked to volume and do not create a conflict situation. Lenders provide financial

support to aggregators to facilitate technology integration or deliver training to mortgage brokers. Across the industry, education and training is essential in enhancing consumers' experience. In many instances, a broker may not even be aware of or able to ascertain the amount of contribution from each of the lenders. We submit it is inappropriate to require such a matter to be considered to evidence that the broker acted in the consumer's best interest.

#### **Tiered servicing not Conflicted Remuneration**

We suggest the guidance include commentary that tiered servicing is not conflicted remuneration.

Tiered servicing arrangements have evolved and are now generally assessed on a balanced scorecard which includes measures such as customer satisfaction. In circumstances where a mortgage broker qualifies for tiered servicing the outcome is that the mortgage broker is able to provide better outcomes for consumers in a more timely fashion.

#### **Further assistance**

Mortgage Choice remains willing to work with ASIC to ensure that the BID is implemented in a timely and responsible fashion and should you require any further information or clarification please do not hesitate to contact Susan Mitchell or myself.

Regards,



Scott Stierli  
**General Counsel & Company Secretary**

Ref	Question	Response
B1Q1	Do you agree with our approach to structuring our guidance around the mortgage broking process?	<p>Yes however the current approach does not distinguish between ‘suggesting’ the consumer apply for a particular credit product and ‘assisting them to apply’ for a particular credit product included in the assessment. It would be helpful to distinguish the obligations in respect of each element of ‘credit assistance’ to clarify that after an assessment is made the broker complies with their best interest duty (BID) by acting on the consumer’s instructions in an expedient fashion.</p> <p>This would clarify that prior to providing credit assistance in the form of assisting the consumer to apply for the relevant product an assessment of the available products need not occur again to confirm that the agreed product is in the consumers’ best interest.</p>
B1Q2	Are there any steps or processes not covered in the draft guidance which are of particular relevance to the best interests duty?	No.
B2Q1	What additional specific issues (if any) do you consider should be addressed in the draft guidance? Why is guidance on these issues needed?	N/A
B3Q1	If you are a mortgage broker, what information do you typically gather from a consumer before considering products? What steps do you take to verify this information?	<p>In our experience, mortgage brokers typically gather information to ascertain a consumers’ eligibility for a range of products on the brokers’ panel. This will include income, expenses, security to be offered (including location), purpose of the proposed facility and loan features that are desirable. For a purchase further inquiries include consumer contribution to the purchase and purchase price of the security.</p> <p>Verification usually occurs after a consumer has provided information as consumers do not usually have access to payslips, copies of rental summaries, bank statements or tax returns during the information gathering process. Provision of these documents can also lead to further inquiries if it appears that information has been omitted by a consumer or is incorrect.</p>
B3Q2	When should mortgage brokers make further inquiries into a consumer’s circumstances to act in their best interests?	<p>Mortgage Brokers should make further inquiries where:</p> <ul style="list-style-type: none"> <li>a. the information disclosed is insufficient for a mortgage broker to ascertain the consumers’ eligibility for a particular credit product; or</li> </ul>

		<p>b. the combination of features the consumer values is inconsistent such as:</p> <ul style="list-style-type: none"> <li>• certainty of repayments (fixed rate),</li> <li>• ability to make further payments to repay the facility quicker (offset); and</li> <li>• cheapest interest rate (variable without offset).</li> </ul> <p>In circumstances where a mortgage broker is able to evidence the further inquiries and attempts to educate the consumer this should be sufficient for the mortgage broker to comply with their BID.</p>
B4Q1	<p>Do you agree that mortgage brokers should consider products holistically in assessing whether they are in the consumer’s best interests?</p>	<p>Yes. When assessing a product a mortgage broker should consider the product package as a whole. This would include not only cost but product features such as offset, redraw ability and separate credit card account amongst others.</p> <p>A mortgage broker should not be required to review and assess each feature of a product and provide a comparison of those features to a consumer. If this was to occur an unintended consequence of such a comparison may create information overload in respect of the assessment for minor variations contained across the products.</p>
B5Q1	<p>What factors and product features do you consider are most relevant to assessing whether home loan products are in an individual consumer’s best interests?</p>	<p>In our experience we are of the view that the following factors are most relevant when assessing a home loan product:</p> <ol style="list-style-type: none"> <li>a. <b>Lender Credit Policy</b> – This includes serviceability (including acceptable income for assessment purposes) and acceptable security as many lenders have restrictions on postcodes or security types.</li> <li>b. <b>Turnaround time for approval</b> – Approval is a key milestone for many customers who wish to purchase a property either at auction or by private treaty. In these circumstances, the ability to obtain a timely approval to facilitate the offer is in the consumers’ best interest.</li> <li>c. <b>Application Process</b> – The customer experience of the lenders’ processes is also a factor that needs to be considered.</li> <li>d. <b>Price</b> – This does not simply relate to “cheapest rate”. This includes matters such as ongoing fees and charges. To be clear, price is considered in light of the consumers’</li> </ol>

		<p>circumstances and product features which meet their requirements and objectives.</p> <p>e. <b>Convenience</b> – Lenders may have particular offerings such as online banking or large branch network which provide relevant access to a particular consumer;</p> <p>We are of the view that the following product features are most relevant in assessing home loan products:</p> <p>a. <b>Availability of offset / redraw</b> – Providing consumers’ flexibility in repayments.</p> <p>b. <b>Fixed Rate offering</b> – Where consumers will benefit from certainty of repayments including Rate Lock where available.</p> <p>c. <b>Interest Only Loan</b> – Where appropriate for the consumer to keep costs low and free up cash flow.</p>
<p>B5Q2</p>	<p>Do you agree with our expectations about how cost and non-cost factors should be considered by brokers when making a product assessment?</p>	<p>We agree in principle that a mortgage broker should consider both cost and non-cost factors however we do not agree with the significant weight based on cost in relation to other non-cost factors.</p> <p>The interest to be charged on a particular loan is based on a number of factors including the Loan to Value Ratio (LVR). By prioritizing cost as the main factor to be prioritized this may result in generic advice that a cheaper rate may be available if the consumer reduces their LVR or increases their income.</p> <p>By way of reference, the Example 4 result can be extrapolated to the vast majority of consumers, as most would be eligible for a better rate if they meet different criteria.</p> <p>We suggest that the key consideration is actually Lender Policy and should receive appropriate priority. It would appear inefficient for both consumers and brokers to assess products for which the consumer is not eligible.</p> <p>There should then be a balanced approach between Lender Policy and other factors such as price, turnaround time and convenience offered by the lender.</p> <p>The example contained in RG 000.68 provides that “<i>some consumers will prioritise approval time and compromise on cost because of a time-sensitive transaction, such as an impending settlement date</i>”. We suggest that the example be widened to</p>

		include an auction or purchase as a “time-sensitive transaction”. This would then provide clarity to industry that when considering approval time this is greater than just for settlement.
B5Q3	Are there any other factors or circumstances relevant to determining whether a product is in the consumer’s best interests that our guidance should discuss? If so, what are they and why is guidance needed?	N/A
B6Q1	Are there any other factors relevant to the presentation of information that we should consider including in our guidance?	N/A
B6Q2	If you are a mortgage broker, how do you typically present information to consumers? Does this information take a particular form?	<p>Mortgage Choice brokers use a tool called “Product Analyser” which allows a broker and consumers to view key information in respect of a number of products. The key factors outlined include:</p> <ul style="list-style-type: none"> <li>a. product name and type (including LVR);</li> <li>b. amount of the proposed facility and term;</li> <li>c. the applicable interest rate and type (fixed or variable);</li> <li>d. both standard Up-front fees and annual service or package fee; and</li> <li>e. the estimated ongoing monthly repayment.</li> </ul> <p>The results can then be expanded to include more granular detail such as occupancy requirements, features, rate types, loan access, loan limits, breakdown of upfront costs, breakdown of ongoing other regular fees, redraw fees, variation fees, exit fees, repayment type, method and options.</p> <p>Where the suggestion is provided face to face the consumer views the results on the brokers’ screen with the option for the broker to email a link to the consumer which contains a copy of the results.</p>
B6Q3	Do you agree that mortgage brokers should educate consumers and help them to understand potential implications of different choices (e.g. the nature of credit products and their features)?	<p>Yes. This process usually occurs as a result of consumers providing instructions and making enquires of the broker. In some circumstances a consumer does not require education particularly if they are financially savvy and experienced in these types of transactions such as a refinance for an investor.</p> <p>We recommend that the guidance clarify that the obligation to educate is limited to key factors involved in the mortgage brokers’ assessment.</p>

B6Q4	<p>If you are a mortgage broker, in what circumstances would you only provide one product option/recommendation? Do you agree with our view that consumers should generally be presented with more than one option?</p>	<p>A mortgage broker would likely only provide one product option / recommendation in circumstances where, due to the consumers' particular circumstances, that is the only option available to a consumer from the mortgage brokers' panel of lenders.</p> <p>In some circumstances, a consumer will request a broker 'find the right loan' and in response to that enquiry that is what the broker responds with – one loan.</p> <p>We agree with the premise in RG000.82 that whilst there may be a number of shortlist options which meet the consumers requirements and objectives presented to a consumer it is not inconsistent with acting in the consumers' best interest to identify only one of those as a recommendation.</p> <p>Industry would benefit from an example of ASIC's expectation in presenting options and recommendations and the breadth of detail required to satisfy RG000.82(c) of identifying why the particular option was recommended.</p>
B6Q5	<p>How can a mortgage broker act in a consumer's best interests when assisting them to apply for one credit product when the broker recommended another?</p>	<p>As identified above we suggest that the BID in relation to assisting a customer to apply for a particular credit product (after assessment) be limited to acting with efficiency and resolving any conflicts in the consumers' interest.</p> <p>This would mean that a mortgage broker is able to comply with their BID (providing the recommendation was in the best interest of the consumer) by assisting the consumer apply for another one of the shortlisted options or the cheapest option by acting in accordance with the consumers instructions in a timely manner.</p>
B7Q1	<p>Do you require further guidance on the distinction between your obligations under the new best interests duty and the existing responsible lending obligations?</p>	<p>No the distinction is clear. It would however be helpful for the guidance to provide examples of where a mortgage broker may meet the BID but not meet their responsible lending obligations.</p>
B7Q2	<p>Are there any other requirements of the National Credit Act that interact with the new obligations and require further guidance?</p>	
B8Q1	<p>Should mortgage brokers be required to consider products provided by</p>	<p>No. This may have unintended consequences as mortgage brokers are not in a position to opine on lenders or products which are not on their panel. Mortgage brokers cannot know</p>



	parties outside their panel of credit providers?	each of the lenders requirements so are unable to ascertain if a consumer is eligible for the particular product.
B8Q2	If you are a mortgage broker, does the software you currently use present you with options that you are not accredited to recommend?	Yes. The software used by Mortgage Choice is agnostic of broker accreditation. The comparison software allows a broker to view details of the entire catalogue of products available from the Mortgage Choice panel including those with which they do not hold accreditation.
B9Q1	Do you agree that the best interests duty should apply at the time of the assessment?	<p>We agree with the premise that the BID applies at all times throughout the assessment process. The guidance should be clarified that when providing ‘credit assistance’ in the form of assisting a consumer to apply for a product which was presented to a consumer (either recommendation, shortlisted option or cheapest option) that the obligation to make a further assessment is not required.</p> <p>This could be achieved by including an additional example in line with <u>Example 7: Another assessment required</u>.</p> <p>Scenario: Shiva is a first home buyer who contacts a broker to organize a home loan. The broker works with Shiva and recommends a particular home loan along with presenting other shortlisted options. The broker explains that the reason for recommending the particular product is that at the time of the assessment the particular product has the cheapest cost (interest rate and fees) when considering comparable products which meet Shiva’s requirements and objectives including to have an offset. Shiva takes some time to think about whether she will accept the recommendation provided by the broker or one of the alternatives.</p> <p>The broker follows up Shiva to see if he can provide any further assistance. Shiva is waiting for her partner to return from a work trip to discuss the recommendation and options and promises to get in touch once this happens.</p> <p>40 days after providing the recommendation Shiva responds to the broker to say she has discussed the information presented and wishes to proceed with the recommended option. The broker complies with the BID by efficiently applying for the recommended option. Given less than 90 days as passed since performing the broker’s assessment the broker is not required to perform another assessment.</p> <p>Commentary</p>

		<p>The Broker is able to rely on the assessment provided that less than 90 days has elapsed from the date of the assessment.</p> <p>If the broker is not able to rely on the assessment for an appropriate period of time the current drafting of the guidance would require a broker to perform a new assessment upon receipt of instructions. The new assessment may or may not alter the recommendation based on the actions of a third party subsequent to the recommendation being provided.</p>
B9Q2	<p>Do you agree that when making subsequent assessments brokers cannot necessarily rely on the initial assessment?</p>	<p>No. Whilst each assessment should be a standalone assessment, a broker should be able to rely on the initial assessment in performing the further assessment.</p> <p>Scenario</p> <p>Carly approaches a broker and informs her that she would like a home loan with an offset account. After gathering Carly's information, the broker provides a recommendation for a loan (with an offset) with Lender A, shortlisted options (which include an offset) with Lender B and Lender C and a cheaper alternative with Lender D which does not include an offset.</p> <p>Carly informs the broker that after being able to see the additional cost of an offset no longer requires an offset. The broker should be able to utilize the details of the product offered by Lender D as a baseline for the further assessment.</p>
B9Q3	<p>Do you agree that changes which occurred after the recommendation, which were reasonably foreseeable when the recommendation was made, should be relevant in considering whether the best interests duty has been complied with?</p>	<p>Yes if the changes are reasonably foreseeable. In circumstances where the consumer does not disclose matters after appropriate enquiry the broker should still comply with their BID.</p>
B10Q1	<p>If you are a mortgage broker, on what basis do you typically recommend a package to a consumer?</p>	<p>A packaged loan product would typically be recommended to consumers in the following circumstances:</p> <ol style="list-style-type: none"> <li>a. The consumer as part of their objectives identify they wish to have all of their banking needs met by one institution so new accounts are necessary;</li> <li>b. The lender does not allow a particular home loan product to be offered as a standalone product;</li> <li>c. The annual fee is offset by the lower interest rate; or</li> <li>d. There is regularly sufficient surplus funds available to contribute to an offset account to reduce the interest</li> </ol>

		payable by the consumer by more than the associated fee.
B10Q2	If you are a mortgage broker, do you typically compare a range of packages that are available to you? Do you currently compare packages available to standalone home loan products? If so, how?	<p>Aggregator software uses consumers' requirements and objectives to ascertain products which are not unsuitable. A package is typically offered only when the additional features and products meet the consumers' needs.</p> <p>Where the additional product is an offset account Mortgage Choice brokers have access to calculators which estimate the benefit to the consumer of the package as a whole.</p>
B11Q1	If you are a mortgage broker, what do you generally do if a consumer seeks tax advice from you? What other matters outside your expertise do consumers seek guidance on?	The majority of consumers who use a mortgage broker have an existing relationship with an accountant. During the process if tax matters arise a prudent mortgage broker would refer the consumer back to the consumer's accountant.
C1Q1	Do you agree with our general approach to administering the conflict priority rule?	<p>Yes. Mortgage Choice is supportive of where possible eliminating potential conflicts. However the broad brush inclusion of payments and non-monetary benefits made to a licensee being included does not provide due consideration for the Aggregator's role and responsibility to ensure adequate training for its credit representatives. Lenders may contribute funds to deliver training and education programs to upskill brokers to provide better customer outcomes however such payments would require identification and documenting how the selection of the lender is in the consumer's interest.</p> <p>It would be preferable if the guidance was amended to clearly exclude amounts paid to an aggregator to facilitate training and education. Whilst a broker may receive a proportional benefit of such training (as a result of being a broker in the network) the benefit is not attributed to their personal exertion so ought not be a conflict.</p>
C1Q2	Are there any other factors relevant to the prioritisation of consumers' interests that we should consider including in our guidance?	
C1Q3	Are there other types of activities or conduct that would contravene the conflict priority rule where ASIC should provide guidance?	

C2Q1	Do you agree with our expectations about record keeping?	Yes.
C2Q2	Are there any other examples of types of records that could be referred to in our guidance?	No
C2Q3	How long should records be kept for?	<p>We suggest the appropriate date is 7 years from the date of providing the credit assistance. There are circumstances that the mortgage broker and aggregator will not be able to ascertain the date the credit contract is completed.</p> <p>For example in circumstances where a customer applies to a lender for hardship as a matter unrelated to the application (such as subsequent job loss as a result of COVID-19) some lenders will cease paying trail therefore the loan may be active however the licensee receives no further information. Many lenders will not provide an aggregator or broker with any further information after this.</p> <p>To require brokers to retain records for 30 years after the finalization of the credit contract is not appropriate in the above circumstances.</p>
C2Q4	If you are a credit licensee, do you already require the mortgage brokers you authorise to keep standardised records? If you do, what form does this take?	Yes. As a licensee we require mortgage brokers to keep standardized records electronically in cloud storage. For each occasion a broker provides credit assistance there are currently 2 electronic records maintained. They must maintain the Preliminary Assessment and the application submitted with all its supporting documentation.
C3Q1	Do you agree with our general expectations about the practical steps credit licensees should take to comply with this obligation? Are there any other relevant factors?	Yes we agree that credit licensees should take 'reasonable steps' to ensure credit representatives comply with the BID. It may be helpful if ASIC provides examples to confirm that where a broker acts outside of their authority in breach of the licensee's guidelines this is not a breach of the licensees' obligations unless it is systemic in nature.
C3Q2	If you are a credit licensee, how do you currently monitor your authorised mortgage brokers? How do you intend to monitor compliance with the best interests obligations?	<p>Mortgage Choice has a dedicated compliance team which performs regular file reviews to monitor compliance with both Mortgage Choice policy and responsible lending obligations. The resulting score of a review will determine the date for the next audit.</p> <p>To monitor compliance with the best interest obligations all mortgage brokers will be provided with mandatory training, the compliance team will be trained on the new best interest</p>

		obligations and a new compliance regime implemented which includes using key risk indicators to target reviews.
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