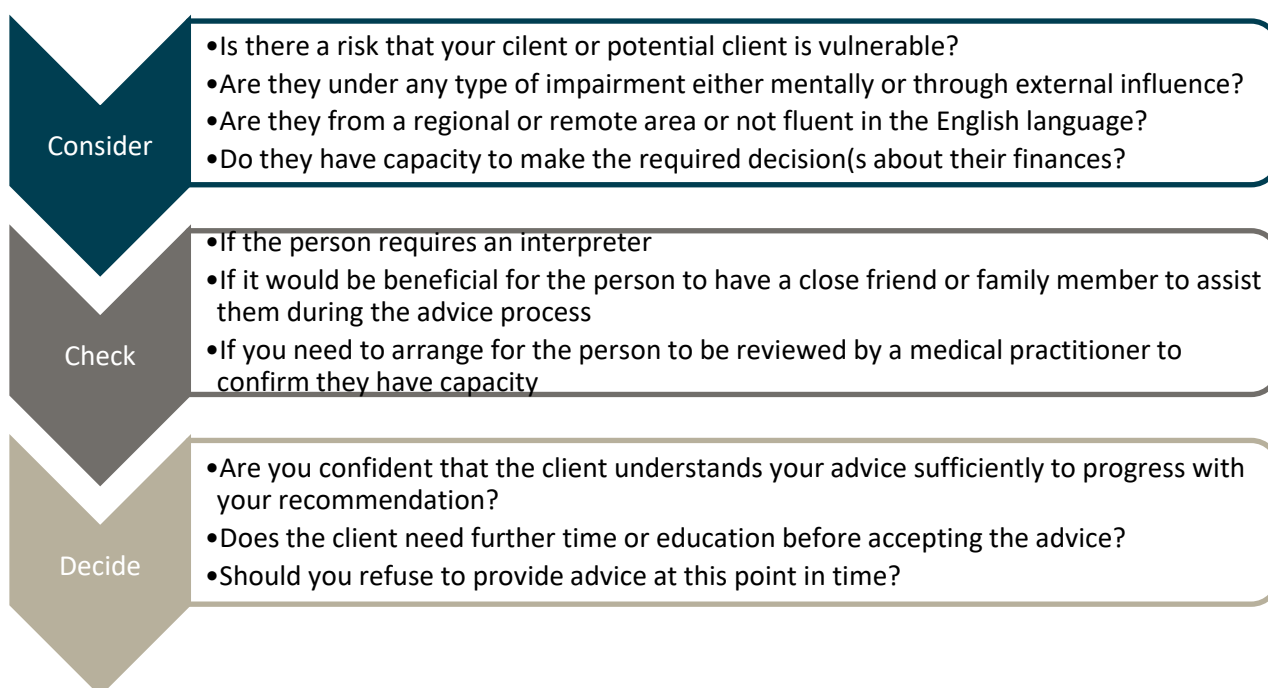


VULNERABLE CLIENTS POLICY

Version 1.01
Last updated 16.09.20

At a glance



Key requirements

Licensee

Do
Ensure advisers are meeting best interest duties (BID) when advising vulnerable clients

Representative

Do
<i>Record client needs, financial situation and objectives in the appropriate data collection document.</i>
<i>Ensure that a general advice warning is given to the clients where general advice is provided.</i>
<i>Address all the necessary BID requirements when providing any personal advice to a vulnerable client.</i>
<i>Ensure your advice process is appropriate for vulnerable clients</i>

DO NOT
Make a recommendation if you cannot be satisfied your client understands your advice and the benefits, costs and risks of the financial products that you recommend.
Attempt to pressure a client to make a decision about your advice or recommendations if it is not clear that they understand or have not been given sufficient time to review your recommendations.
Attempt to provide general advice where the client is seeking, expects or understands they are receiving personal advice.
Include general advice in a document with personal advice as it may lead to client confusion over the nature of the advice provided.

Introduction and scope

This policy outlines what we expect when one of our representatives (you, your, the adviser) provides advice and to a vulnerable client. Importantly, it also addresses how Insight Investment Partners expect our advisers to address the best interest duty requirements where personal advice is provided to retail clients.

This policy is also to be considered when providing general advice. While a person's individual objectives, financial situation and needs are not considered in giving general advice, the test for personal advice is whether a reasonable person might expect you to have considered those matters. A reasonable person may more readily expect you to have taken into account a vulnerable person's individual circumstances because the vulnerable person may not be as well informed or capable of considering those circumstances for themselves. A reasonable vulnerable person may also more easily perceive that you have considered their individual circumstances.¹

The measures are intended to help Insight Investment Partners and its representatives to meet statutory and licensing requirements relating to:

- compliance with the financial services laws
- best interest duty
- financial advisers

How does the law apply?

As a Licensee, we have a responsibility to:

- do all things necessary to ensure that the financial services we are licensed to provide are provided efficiently, honestly and fairly.²

As an adviser, you have a responsibility to:

- understand your client through asking appropriate questions during the fact-finding process;³
- provide advice that is appropriate;⁴
- act in the best interests of your client in relation to the advice;⁵
- prioritise your client's interests if your or our interests conflict with those of the client's.⁶

Providing advice to vulnerable clients where you do not adequately consider their circumstances could result in any advice provided being considered a breach of the best interest duties, and unconscionable.⁷

Vulnerable clients a priority for ASIC

ASIC has indicated that reviewing the treatment of vulnerable clients by advice providers will be a priority for the regulator.⁸ This includes the use of ASIC's powers of prosecution and litigation to address any instances of mis-selling, unreasonable advice and poor conduct toward vulnerable clients in the financial services industry.

FASEA code of ethics

Providers of personal advice to retail clients in relation to relevant financial products, must comply with the FASEA code of ethics.⁹ It is the responsibility of Insight Investment Partners to ensure that all advisers comply with the code.¹⁰ As an adviser, the code of ethics requires you to:

- act with integrity and in the best interests of each of your clients;¹¹
- not advise, refer or act in any other manner where you have a conflict of interest or duty;¹²
- provide to a client any advice or financial product recommendations that are in the client's best interest and appropriate to the client's individual circumstances;¹³
- be satisfied that the client understands your advice and the benefits, costs and risks of the financial products you recommend;¹⁴
- consider the broader effects arising from the client acting on your advice, and actively consider the client's broader, long-term interests and likely future circumstances.¹⁵

AFCA fairness project

AFCA has flagged that it considers the timely and open treatment of complaints to financial services providers to be a key focus area.¹⁶ Delays in responding to and dealing with complaints will be called out. This is of particular concern with vulnerable clients who may not be as proactive in driving their complaint, requiring more active monitoring by financial service providers.

What additional obligations do we impose?

As a Licensee, we need to manage the risks associated with providing advice to all our clients. This includes making sure advisers identify and appropriately deal with vulnerable clients.

Who are vulnerable clients?

Client vulnerability can be caused by many things including age and levels of stress. This can be permanent or just a point in time concern. A vulnerable person can be:¹⁷

- elderly or suffering an age-related impairment;
- suffering any form of cognitive impairment;
- suffering from elder or financial abuse;
- experiencing family or domestic violence;
- experiencing specific life events, including:
 - divorce;
 - job loss;
 - death of a close relative;
 - accident or sudden illness; or
 - having a baby;¹⁸
- suffering from mental or other forms of serious illness;
- suffering from any form of addiction; or
- any other personal or financial circumstances causing significant detriment.

Vulnerability can also be indicated by factors including clients:¹⁹

- living in rural or remote areas;
- where English is not their first language; or
- who are unable to readily produce standard identification documents.

Meeting the Best Interest Duty requirements for vulnerable clients

The following table applies when you provide personal advice to a retail client.

BID SAFE HARBOUR STEP	OUR EXPECTATIONS TO MEET THIS REQUIREMENT	DOCUMENTATION REQUIRED
1. Identify financial situation, goals, needs and objectives	<p>A vulnerable client may not be able to clearly describe their current situation:</p> <ul style="list-style-type: none"> Consider asking for more documentation that may enable you to determine their financial position; Ask if they have an independent friend or relative that could attend an appointment with them; Ask the client what they understand by the questions you are asking them, for example 'When I say how much money do you need to live on, what does that mean to you?' <ul style="list-style-type: none"> Ask follow-up questions if anything is still unclear. Document your conversations and any other steps taken. 	<ul style="list-style-type: none"> Fact find File notes SOA
2. Identify the subject matter of the advice sought by the client	<ul style="list-style-type: none"> Consider whether you need to educate the client initially before proceeding. This could include online Money Smart resources; Be conscious of goals that do not sound like they are in the best interest of the client, for example 'I want to pay for my son's new beach house' Try not to lead the client by suggesting subjects. Some vulnerable clients may agree with you and take your suggestions as recommendations even if they do not understand the subject suggested. 	<ul style="list-style-type: none"> Fact find SOA
3. Make reasonable enquiries if you don't have all the information	<p>Where you believe a client is vulnerable, consider:</p> <ul style="list-style-type: none"> Seeking written documents in support of the client's circumstances; Requesting authority to speak to financial institutions on the client's behalf; Asking if the client has a power of attorney or guardianship order in place, or if they need one. 	<ul style="list-style-type: none"> Fact find File notes Any documents collected
4. Consider whether you have the expertise required to provide advice on the subject matter sought by the	<p>Consider if you need further expertise to properly deal with the vulnerable client, including:</p> <ul style="list-style-type: none"> Use of a translator if the client is not confident in the use of English; Seek a medical opinion if you have concerns about the mental capacity of the client to be able to make an informed financial decision; Legal assistance if the client requires a Power of Attorney or has a Guardian appointed; Request the client bring an independent trusted friend to the meeting to assist. 	<ul style="list-style-type: none"> File note

BID SAFE HARBOUR STEP	OUR EXPECTATIONS TO MEET THIS REQUIREMENT	DOCUMENTATION REQUIRED
client; and if not, decline to provide the advice		
5. Conduct a reasonable investigation	<p>Be aware that a vulnerable client may not be able to fully inform you of all their needs, and it will be necessary to ensure you are confident that you have all the required information.</p> <ul style="list-style-type: none"> Is there a trusted family member, professional (accountant or solicitor) or relative that can assist with further information or guidance; Investigate if the client has a Power of Attorney or Guardianship order in place; Consider the complexity of products recommended and discussed; Take a broad view, including the longer term exit strategy for the client from the products recommended. 	<ul style="list-style-type: none"> Fact find
6. Base all judgements on the client's relevant circumstances	<p>To demonstrate that you have based your advice on the client's relevant circumstances, you must:</p> <ul style="list-style-type: none"> Show that you had concerns with the vulnerability of the client, and the steps you took to address this. This may mean refusing to provide advice; Consider if simpler products would be more appropriate to the level of the client's understanding; Do not recommend products that require client control or intervention (for example, SMSFs); 	<ul style="list-style-type: none"> SOA File notes
7. Take any other steps that, at the time the advice is provided, would reasonably be regarded as being in the client's best interests, given the client's relevant circumstances	<p>Other general steps to take include:²⁰</p> <ul style="list-style-type: none"> Allowing a longer time for the client to make a decision. Recommend the client take the advice away before committing; Encouraging the client to seek input from a trusted friend or family member with no conflicting interest in the outcome, and offering to meet and explain the recommendations to the family member; Encouraging the client to ask questions of the adviser; Asking the client to explain back key elements of the advice to the adviser; Asking questions to the client to test the client's level of understanding of the recommendations being made, and the basis for making them; Presenting lower risk options to the client in the advice to facilitate comparison and effective choice in the client's decision-making; 	<ul style="list-style-type: none"> Fact find SOA File notes

BID SAFE HARBOUR STEP	OUR EXPECTATIONS TO MEET THIS REQUIREMENT	DOCUMENTATION REQUIRED
	<ul style="list-style-type: none"> • Ensuring as far as possible that the client feels equally free to reject the recommendation to reduce the risk that the client may be substituting trust in the adviser for rational decision-making; and • Recommending the client undertake education tailored to the client's capacity to understand. 	

Points to note

If you have concerns or are uncertain about what to do, discuss your client with your Compliance Manager for further guidance.

Having a vulnerable client does not always mean that you cannot provide advice. You may need to change your process to allow more time for your client to consider your advice or seek assistance from an external person.

Vulnerable clients may have an existing Power of Attorney or Guardianship order in place. If they do not, and you are concerned about their ability to make decisions for themselves, encourage them to obtain legal advice.

Addressing any conflicts of interest?

It is a legal requirement on us as a Licensee to manage conflicts of interest.²¹ Also, where you provide personal advice to a retail client, you must prioritise the interests of the client, if a conflict exists.²² There could be a conflict if:

- You are pressured to provide advice for a vulnerable client by an existing client;
- You recognise that the client is vulnerable and proceed with the advice without taking the appropriate precautions;
- You provide advice to a couple and you are concerned one of them is a vulnerable client.

References

Regulatory and legal references

Legislation	<i>Corporations Act 2001 – Chapter 7; ASIC Act 2001</i>
Regulations	Corporations Regulations 2001 - Chapter 7
Legislative Instruments	
Regulatory guidance	ASIC – Report 587; ASIC Corporate Plan 2019-23
Other	FASEA Code of Ethics 2019. Final report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

Endnotes

¹ *Australian Securities and Investment Commission v Westpac Securities Administration Limited* [2019] FCAFC 187, [323].

² s912A(1)(a) *Corporations Act 2001*

³ s961B(1), s961B(2)(a) and s961B(2)(b) *Corporations Act 2001*

⁴ s961G *Corporations Act 2001*

⁵ s961B(1)

⁶ s961(J)

⁷ s12CB and s12DB *Australian Securities and Investment Commission Act 2001*; ASIC v Kobelt [2019] HCA 18; s961B, s961E, s961G *Corporations Act 2001*.

⁸ James Shipton, 36th *Annual Conference of the Banking and Financial Services Law Association*, 30 August 2019; ASIC Corporate Plan 2019-23.

⁹ s921E *Corporations Act 2001*.

¹⁰ *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*; s921J and s921K *Corporations Act 2001*.

¹¹ FASEA Code of Ethics Standard, standard 2.

¹² FASEA Code of Ethics Standard, standard 3.

¹³ FASEA Code of Ethics Standard, standard 5.

¹⁴ FASEA Code of Ethics Standard, standard 5.

¹⁵ FASEA Code of Ethics Standard, standard 6.

¹⁶ Speech by Helen Coonan March 2019, <https://www.afca.org.au/news/media-releases/helen-coonan-afca-is-bringing-a-fairness-revolution-to-the-banks/>

¹⁷ Banking Code of Practice 2019 p.22.

¹⁸ ASIC Corporate Plan 2019-23 p.12

¹⁹ Final report from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Volume 1 p.89

²⁰ FASEA Financial Planner Code of Ethics 2019 Guidance p.27

²¹ s912A(1)(aa) *Corporations Act 2001*.

²² s961J *Corporations Act 2001*.