Contents

[**SOA – Demonstrating Best Interest using the IFP Template** 2](#_Toc36642353)

[**Cover Letter** 3](#_Toc36642354)

[**Cover Page** 3](#_Toc36642355)

[**Table of Contents** 3](#_Toc36642356)

[**The Scope** 4](#_Toc36642357)

[**Our Standard Disclaimer** 4](#_Toc36642358)

[**Reasonable Basis \_ What has Changed** 5](#_Toc36642359)

[**Appropriate Advice** 5](#_Toc36642360)

[**FASEA Code of Ethics** 5](#_Toc36642361)

[**Financial Objectives** 5](#_Toc36642362)

[**Relevant Personal Information** 6](#_Toc36642363)

[**Adding “Background Information”** 6](#_Toc36642364)

[**Risk Profile** 7](#_Toc36642365)

[**Strategy Recommendations (Tabular Format)** 7](#_Toc36642366)

[**Uncritical Reliance Upon Generic Texts or templated footnotes** 8](#_Toc36642367)

[**Other Sections in the SoA that Demonstrate Best Interest** 8](#_Toc36642368)

[Replacement Product Table 8](#_Toc36642369)

[Benefits Gained 8](#_Toc36642370)

[Benefits Lost 9](#_Toc36642371)

[Reason For Recommended Product Solution 9](#_Toc36642372)

[Other Potential Lost Benefits or Significant Consequences 9](#_Toc36642373)

[Risks associated with Change 9](#_Toc36642374)

[Other Strategies Considered 10](#_Toc36642375)

[**Ongoing Service** 10](#_Toc36642376)

[**Fees and Best Interest** 11](#_Toc36642377)

[**Potential Conflicts of Interest** 12](#_Toc36642378)

[**Appendix** 12](#_Toc36642379)

[**Finalising the SoA** 12](#_Toc36642380)

[**MISCELLANEOUS, FAQs** 13](#_Toc36642381)

[**File Notes** 13](#_Toc36642382)

[**Financial Services Guide** 13](#_Toc36642383)

[**Record of Advice** 14](#_Toc36642384)

[**Incorporation By Reference** 14](#_Toc36642385)

[**Advice that is Not Appropriate** 14](#_Toc36642386)

[**Gearing / Margin Loan / LRBA** 15](#_Toc36642387)

[**Implementation Only ‘advice’ (transaction service) (nil advice) (execution only)** 16](#_Toc36642388)

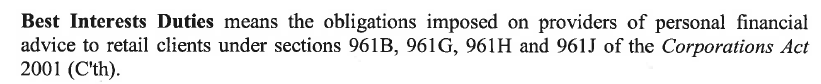
[**SMSF Advice** 17](#_Toc36642389)

[**Transferring a Client from Another Licensee** 18](#_Toc36642390)

# **SOA – Demonstrating Best Interest using the IFP Template**

The Demonstration of **Best Interest** requires a ‘clear & concise’, logically systematic presentation.

The Advice must evidence that Recommendations address client Goals/Objectives.



The InterPrac Word Statement of Advice (SoA) has been designed to meet the clear and concise standards required under FoFA; especially the requirements of the Best Interest Duty.

It can be used for both single and multiple recommendations. We also have a coded version for Xplan, AdviserLogic and MidWinter.

The following information will provide guidance on how to use the InterPrac Word Statement of Advice including information that is required, what should be avoided and some Tips and Traps.

**The InterPrac standard Statement of Advice comprises 3 templated sections:**

* The standard SoA ‘shell’ or outline. *InterPrac Statement of Advice (SoA) - <Date> (word)*

To be fully completed, it requires ‘cut-and-paste’ segments from the strategy and appendix Libraries (below):

* A strategy text Library *InterPrac Statement of Advice (SoA) Strategy Text – <Date> (word)*

This is will continue to be updated and contains popular financial planning strategies.

* An appendix text Library *InterPrac Statement of Advice (SoA) Appendix - <Date> (word)*

This too will continue to be updated and contains supporting technical information in support of the financial planning strategies, as required.

Additionally, there are more ‘specialist’ templates:

* *InterPrac Record of Advice (ROA) - <Date>* (word)
* *InterPrac Risk Only Statement of Advice - <Date>* (word)***\*\****
* [*InterPrac SMSF Establishment Only Statement of Advice (SoA) – <Date>* (word)](http://interprac.com.au/wp-admin/post.php?post=2226&action=edit)***\*\****
* *InterPrac Execution Only (Transaction Record) - <Date>* (word)
* *Statement of Advice (SoA) Strategy Text for InterPrac Model Portfolios (version)* (word)
* *Statement of Advice (SoA) Appendix investor1st IDPS v1.0* (word)

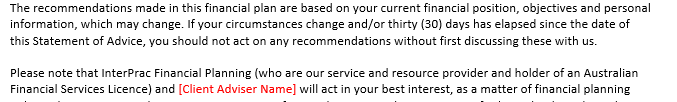
*\*\* Developed originally for Limited Advice Licensees.*

## **Cover Letter**

The SoA includes a covering letter and front page which can be adapted and personalised by the adviser.

|  |
| --- |
| These should be consistently addressed & personalised by the Adviser. |

If the SoA is a new SMSF Establishment, the addressing can be to individuals but in the body of the Cover Letter following ‘… any recommendations without first discussing with us ….’



… insert and tailor as necessary the relevant paragraph from these 2 options:

**Option 1:**

“Please be aware that, should you proceed to establish an SMSF, then you will assuming differing roles & responsibilities as both Members & Trustees. This will be reflected in the advice that follows.”

**Option 2:**

“Please be aware that, should you proceed to establish an SMSF, then you will assuming differing roles & responsibilities as both Members & Director(s) of a trustee company. This will be reflected in the advice that follows.”

If the SoA addresses an existing SMSF, Company or Trust, both the Cover Letter and Cover Page should be consistently addressed as per the relevant option <below; Cover Page>.

## **Cover Page**

|  |  |
| --- | --- |
| The SoA includes a covering letter and front page which can be adapted and personalised by the adviser.   |  | | --- | | These should be consistently addressed & personalised by the adviser.  For example, if you are addressing a person in their capacity as an individual (say), or their capacity as a Director (say), the correct ‘hat’, or ‘hats’, should be reflected fully and consistently: |   Ms So-So  Shareholder & Director  <Company> Pty Ltd  Ms So-So  Member of <SMSF Name> &  Director of <Company> Pty Ltd ATF <SMSF Name> |

Mr & Mrs So-So

Members & Trustees of <SMSF Name>

## **Table of Contents**

The “Table of Contents” can be adjusted, or deleted, if the total SoA body is under 10 pages.

## **The Scope**

Scope/Objectives SoA sections set the scene for whatever you advise.

The Scope has 4 sections:

a. what the client wanted **(Client Voice)**

We need to hear an ‘echo’ of a plausible sounding client

eg. “ I’m worried sick about what will become of my family when I die. How are they going to pay the bills?”

In this part of the SoA, this could appear as: “ You are really worried about providing for your family when you die.”

But not “You came to see me wanting an insurance review”.

b. what you as the professional judge to be ALL of the relevant advice **(Adviser Voice)**

(In our meeting) … “We should look at:

* Insurance (directly held; funded through superannuation; useful terms; beneficiaries)
* Superannuation (fees and costs; meeting future income needs; existing insurance; asset allocation)
* Savings Plan (expected timeframe; meeting unforeseen needs; budgeting)
* Estate Planning (Wills, POAs, Death benefit nominations) “

This section should be comprehensive, relevant & considered as it demonstrates the adviser’s holistic intent.

The brief mention of ‘Superannuation’ (say), without any limiting, is assumed to include consideration of everything relevant to the client’s superannuation eg. existing superannuation insurances, death benefit nominations.

If there is no limiting of a topic, then all the reasonable sub-topics must be addressed in the subsequent Advice document.

c. what you both agree that this SoA will deal with (a selection from ‘a.’ & ‘b.’) **(Agreed Scope)**

“It was mutually agreed that you only wanted an insurance needs analysis and review of existing policies”

d. the rest/remainder of ‘a.’ & ‘b.’; that is not ‘c.’ **(Excluded Scope)**

Once identified these may be

- disclaimed

- deferred to a meaningful later time (eg. scheduled annual review).

Deferral implies the offer of a service agreement, or some other firm arrangement (‘mechanism’) for a follow up meeting.

* referred eg. referral to an estate planning specialist (say)

--()--

An implausible example of the interplay of Client/Adviser voice(s) in a Scope would be:

1. You came to see me for an insurance review
2. I recommend I do an insurance review
3. We have agreed to do an insurance review
4. <-- nothing to disclaim -->

## **Our Standard Disclaimer**

In the legitimate instance of there being ‘nothing to disclaim’; delete the Disclaimer in the Scope.

‘Nothing to disclaim’ means that the SOA agreed scope ‘c.’ comprehensively covers everything in ‘a.’ and ‘b.’ above.

## **Reasonable Basis \_ What has Changed**

The current form of the FOFA legislation was finally passed into law in March 2016.

The prior underpinning of advice ‘Reasonable Basis’:

* Know your Client
* Know your Product

Notionally, section ‘c.’ in Scope was where Reasonable Basis might validly have traditionally commenced.

Consider sections ‘a.’, ‘b.’ of the Scope as recreating insight into the process of how the advice evolved in the interplay between client and adviser.

The careful treatment of ‘a.’, ‘b.’ sections highlight a key change of emphasis in support of the Best Interest duty.

## **Appropriate Advice**

Prior to the introduction of Best Interest duty, advice was required to be Appropriate. It still is required!

This means the Advice must result in the client be in a better position; taking into account the client’s needs, objectives and financial circumstances.

## **FASEA Code of Ethics**

Standards 5, 6, 9 most directly impact the writing of the SoA.

## **Financial Objectives**

These are the details of the Agreed Scope (section ‘c.’ of the Scope)

The wording commences: “Together we identified the following objectives that we will address in this advice”.

In that sense it’s transparent that the Objectives have been developed collaboratively.

The needs of the client are further informed by the professionalism of the adviser.

There is flexibility allowed in the way the objectives are formatted but the essential elements are that they should be clear & specific; an unambiguous statement of a problem requiring a recommendation.

For example:

1. You require $2,750 per month (after-tax) for your spouse & family if you died today.
2. In the event of you dying ‘today’, you need $500,000 to discharge the mortgage.
3. In the event of your premature death, you estimate $300,000 would be needed for the secondary education of your two children.
4. You are unsure of what personal insurances you own and whether they would meet your family’s future needs if you died or were permanently disabled. You require that pre-existing insurances be identified and an analysis undertaken of the benefit amounts required.
5. You would like your spouse to be insured for the same amounts of death ($750,000) & disability cover ($800,000) you currently own but you require a calculation that you can afford to do so.

However, they should not be unrelated to the matters addressed in the Scope. Objectives should not introduce brand new considerations that have not been foreshadowed in the Scope.

For example,

* the Agreed Scope only mentioned Superannuation (say).
* but the Financial Objectives section introduced downsizing the current home (say).

## **Relevant Personal Information**

Key information from the Fact Find, that is immediately ‘relevant’ to the Recommendations, should be brought forward from the SoA Appendix and precede the recommendations. The information then sets the immediate context for the advice that will follow.

For example, superannuation ‘pension’ advice should at least be preceded by the current ‘net cashflow’ position of the client.

For example, ‘investment’ advice should at least be preceded by the current ‘net investment asset values’.

This will aid the clarity of the advice.

Typically, Name/DOB/Employment status are always sufficiently ‘relevant’ to be brought forward into this section of the SoA.

At the end of the “Relevant Personal Information” section, choose which of the warnings is appropriate, either:

Option 1 - a general warning where we have the relevant information on the file;

or

Option 2 - where the client declines to provide the information or has provided information that you believe is inaccurate.

**The warning essentially says that the client should carefully review the facts for accuracy and completeness; otherwise the quality of the recommendations may be affected.**

Note: Whilst the client can decline to provide information, the adviser is still required to make all reasonable enquiries.

## **Adding “Background Information”**

Sometimes, it is desirable to recount the broad outline of client discussions. These might serve to provide a stronger context for the SoA ie. what is included, what was not included … and why.

For example:

“ When we met, our discussion was mainly around superannuation. However, you raised a number of issues for which you might wish to receive advice at some future date. These included:

* downsizing the current home
* budgeting for future holidays

Furthermore, you discussed …. “

The inclusion of a new SoA section “<Title>” is allowable and may be valuable. Alternatively, it could be a sub-heading in the Relevant Personal Information section (say).

There’s flexibility where this information could appear but it should typically precede the Risk Profiling so that all the client information/objectives/context have been disclosed.

This will ensure nothing relevant appears ‘out-of-the-blue’ in the Recommendations.

## **Risk Profile**

Selected “Risk Profile” tables allow you to choose a specific template table that reflects the specific client(s) risk assessment. Please delete the other individual risk profile tables that do not apply to the client.

There are also

* a Strategic Asset Allocation table
* an aggregate table of all the possible Risk Profiles.

In this way, a client may compare his/her risk description against other descriptions.

You need to record in the Client file both how you arrived at the risk profile, and why you believe it is appropriate.

## **Strategy Recommendations (Tabular Format)**

It is intended that the Strategy Text library fragments will be cut-and-paste into the relevant rows.

1. **Title** **row** … self-evident; but it can come from the text fragment or be more evocative

eg. “Providing income for your family when you die”

The Title cannot be used to substitute for information that should rightfully appear in either of ‘ii’ or ‘iii’ below.

1. **Explanation row** … Notionally <DO THIS!>

The part of the recommendation that carries the action/product/amounts involved. Be very brief

eg. rollover $ from <..> to <…>

eg. apply <insurance> of $ with <terms> funded from <…>

1. **In Your best Interest** **row** … the rationale for <Do This!>

Fully tailored for every SoA … linking the “Explanation” to one, or more, goals/objectives

Notionally, <IF YOU ‘Do This!’, IT ADDRESSES YOUR GOAL/OBJECTIVE OF …>

Goals/Objectives are evidenced in one or more of:

* ‘Client Voice’
* ‘Agreed Scope’
* Financial ‘Objectives’

eg. This <XXX> meets your objective for the family to be debt free if you were to die 'today.

1. **Further Detail:** … anything else that you feel is worthwhile to say!

If you are using our strategy library, it is the remainder of the strategy fragment

|  |  |
| --- | --- |
| Recommendation #3 |  |
| Title | Insurance\_ To provide income for your family when you die |
| Explanation | Apply for a OneCare Income Life Policy ($800,000) from your existing OnePath Frontier superannuation: - extended terminal illness benefit  - serious disability premium waiver  - benefit indexation  - etc |
| In your Best Interest | This will provide $500,000 to discharge the mortgage & the estimated $300,000 needed for the secondary education of your two children. |
| Further Detail | <selected Life Cover strategy text> |

1. *state key calculation assumptions*

|  |  |
| --- | --- |
| Recommendation #4 |  |
| Title | <Title> |
| Explanation | Invest $30,000 into the existing OnePath Frontier Investment portfolio:   * Product 1 $12,000 * Product 2 $ 7,500 * Product 3 $10,500 |
| In your Best Interest | <the previously disclosed Goal/Objective being addressed> |
| Further Detail | <Other> |

## **Uncritical Reliance Upon Generic Texts or templated footnotes**

If you **solely** rely on the pre-existing wording of generic text, it is highly unlikely you will satisfy the Best Interest duty. Selective ‘additions’, ‘modifications’ or ‘pruning’ of text is typically required.

Inclusions of irrelevant or contradictory material does not demonstrate Best Interest as it may appear to be one-size-fits-all advice.

Depending upon the context of your advice, a typically useful standard footnote (say) may now be irrelevant or contradictory and should be tailored or removed.

## **Other Sections in the SoA that Demonstrate Best Interest**

### Replacement Product Table

Normally an older product is replaced by a newer product.

In that context, the onus is to evidence why the new product is superior to the pre-existing product.

This comparison table must support why products are to be changed; not act as just a list of cost/features.

Moreover, if the pre-existing product has better costs/features, the adviser will need to actively justify switching by referencing the clients’ goals/objectives.

If the original product is to be cashed and that cash reinvested in a proposed product, the comparison is between the original & proposed products; not the cash and proposed products.

If the cashing of a pre-existing product has been actioned by the client prior to advice being given, then a cash vs proposed product comparison is justified. This must not be contrived.

### Benefits Gained

A product/platform or service may have ancillary benefits that are not immediately related to the client’s goals. They are indirect or consequential benefits which are potentially valuable.

eg. moving to a new platform may provide access to greater investment choice or more sophisticated products

eg. moving to a new insurance provider may allow future ‘linking’ of covers between superannuation and non-superannuation

Keep these concise.

### Benefits Lost

In some situations, a product that is to be replaced has valuable features. However, the clients’ goals are better served by another product of platform.

It is important that the clients understand what they are giving up in whole or in part.

For example, it might be recommended that a pre-existing superannuation fund retain only a minimal balance to fund pre-existing insurance premiums.

The reduction of funds to that pre-existing provider requires, in fairness, disclosure of any good features of that retained product eg. lower ICR, broad investment menu, past performance of the portfolio

Keep these concise.

Relative ‘cost’ considerations are dealt with in more detail in the Product Comparison table.

### Reason For Recommended Product Solution

The ‘In Your best Interest’ row in the tabular recommendations has likely covered some aspects; similarly, ‘Benefits gained’.

This section is for any fresh matters that are ancillary to what has already been dealt with. It is not for extra recommendations but matters following from the recommendations already made.

Moreover, it allows for broader, specifically tailored commentary using information from the fact find.

‘Given your desire to look after you family when you die, the passage of assets to your beneficiaries is important; especially as you have children from other marriages. The recommended <platform> provides non-lapsing death benefit nominations which can be useful to you …..’

### Other Potential Lost Benefits or Significant Consequences

This section is for any fresh matters that are ancillary to what has already been dealt with.

It is not a repeat of ‘Benefits Lost’ but it could further comment upon one or more of these; using specifically tailored information from the fact find.

For example:

‘Given your desire to look after you family when you die, the passing of assets to your beneficiaries is important; especially as you have children from other marriages. Your pre-existing <platform> provided non-lapsing death benefit nominations which the new platform does not have.

However, you have explained that you intend to meet with an estate planning solicitor and you should explore other options …’

### Risks associated with Change

Not a repeat of ‘Benefits Lost’, ‘Other potential benefits lost’ or ‘Significant Consequences’.

These are typically general principles that underlie investment or insurance that are made obvious in the client’s best interest.

For example:

* “Moving from cash to a managed fund imposes a ‘process’ and typically an ‘increased delay’ in accessing liquid funds”
* “Moving from a bank account implies the loss of a capital guarantee”
* “Moving from a savings account removes the certainty of a fixed interest return” (albeit low)
* “Our recommendation for trauma cover used benefit assumptions that, in the experience of this practice, more than meet the potential needs of many of our clients. If you wish to more fully examine these assumptions, we are happy to explain and further tailor benefit amounts as necessary.”

### Other Strategies Considered

The default ‘Other Strategy’ is No Change.

This should always be addressed first; typically, by referencing how the client’s goal would not have been met by pre-existing product retention.

Next …. deal with any other valid strategic options; these may not meet the clients’ goals as efficiently as the recommended strategy.

Careful use of the section will enable a further demonstration of the Adviser’s openness to and analysis of all relevant options in the best interest of the client.

## **Ongoing Service**

“Ongoing Service” is an optional area in the template. It allows for detailing of an Ongoing Fee Arrangement (OFA) resulting in easy reference for preparation of future Fee Disclosure Statements.

Advisers should carefully describe the details of any specific service offering(s) they may have.

Beware phrasing like: ‘we will offer a review annually’

It is an ambiguous expression of any ongoing service obligation.

Worst case, this may be interpreted that the Client pays a fee entitling a ‘proactive offer’ of service; any actual service provision may not be obviously covered by that same ongoing fee

Moreover, is the fee charged proportionate for just an ‘offer’? For example, charging $2,200 per year (say) for a review that is offered but routinely declined is increasingly hard to justify; even if the Client opts in.

Under s962A, S962E of the Corporation Act, an Ongoing fee Arrangement attracting FDS/Opt In obligations

- an arrangement is entered into; this arrangement must explicitly reference an obligation to provide ongoing services

- such an arrangement will cover the provision of ongoing advice or portfolio management

- the ongoing fee is specifically referenced

- the client is made aware of any terms or rights (termination of agreement, say) they have under the arrangement.

The Arrangement may involve a formal Service Agreement (best practice), or be carefully referenced in the SoA which is accompanied by a signed, dated Authority To Proceed.

It is advisable to disaggregate Ongoing Service Fees into sub-component services; this can be done at any level of granularity. The rationale is that the Regulator, in the absence of Reviews being held, could require a refund of the whole aggregated service fee. However, if other sub-component services were provided, not all of the service fee may need to be refunded.

## **Fees and Best Interest**

1. With the exception of fixed fees (plan fees, certain administrative costs), all fees should be displayed as both $ and %.
2. Adviser Fees

When fees are based upon a % of funds under management, there is an implication that the client will receive an increased ‘payback’ in return for increased fees.

This payback can be justified qualitatively by linking a platform transfer to a client direction/goal (say).

The payback can be justified quantitatively by linking downstream cost recovery due to lower ongoing platform costs (say).

However, promising increased investment ‘performance’ is fraught and this may happen in subtle ways.

For instance, if there is only a qualitative payback for shifting platforms and incurring higher fees:

“*You advised you would like to be able to access a broader range of investment options. The recommended platform offers* ***direct shares and ETFs*** *on both pension, superannuation and investment accounts.”*

This, in the absence of a clear client direction, is a veiled portfolio ‘performance’ goal. Consequently, it isn’t sufficient justification to shift platforms on its own\*\*; particularly if the pre-existing platform has a ‘broad’ menu.

\*\* it is assumed the client did not have a specific goal to purchase direct shares or ETFs rather that the adviser has proposed that direct share and ETFs are potentially valuable for the client

1. An implementation fee (1.5%) and an ongoing fee (1.5%) results in a 3% impost in the first year.

Whether this demonstrates Best Interest will depend upon the initial client balance and the typical workload of maintaining the client’s account/file. It is a grey area.

However, industry norms would challenge an aggregate fee of this size.

Given the commercial need for cost recovery/profit, what are some options to reduce the impact of high aggregate fees ‘in the first year’:

* rebate %-based implementation fee; especially if insurances are successfully underwritten
* decide upon the size of the %-based implementation fee considering the overall ‘first year’ impact
* stagger the commencement of the ongoing fee
* reconsider the use of implementation fees altogether; they are becoming less common
* have the implementation calculated on a ‘fixed’ ie. non-percentage basis (this should not be contrived).

It breaks the nexus between the quantum of FUA and the cost of client management

Contrast the ‘look and feel’ of this fee disclosure:

1. Disclosure 2.20%, $2,098 pa
2. Disclosure 1.73%, $1,650 pa

… ‘b’ indicates/supports that the fee has been determined on a fixed fee methodology

## **Potential Conflicts of Interest**

Please note the conflicts of interest that apply for Investor1st and Diversa.

## **Appendix**

The SOA Appendix is a separate section at the back.

Minimally, it should include from InterPrac Statement of Advice (SoA) Appendix - <Date> (word)

- Appendix 1. Fact Find summary information that has not been recorded in the ‘Relevant Personal Circumstances’

- Appendix 2. Generic asset allocation and risk/return explanations: not required for Insurance advice.

- Appendix 3. Further selected technical information supporting the recommendations.

- Appendix 4. Supporting Calculations and Projections.

## **Finalising the SoA**

Finally … proof-read!

This is really critical as a poorly proof-read document could destroy the effectiveness and appropriateness of the Advice, not to mention your reputation with the client.

You are responsible for every SoA you produce.

# **MISCELLANEOUS, FAQs**

## **File Notes**

File notes are not an ‘extra’ but a ‘required’ & vital part of the financial planning process.

They can:

* Supplement your fact find
* Further evidence your research
* Evidence drafts of your communications that are eventually polished
* Disclose the assumptions of the Adviser’s decision-making
* Act as Minutes of a meeting
* Evidence client interactions

(some file notes are just archived client communications)

* Evidence post-SoA implementation changes

(particularly if you and the client have been in further discussion since the Authority To Proceed was signed)

* Evidence interactions with product providers
* Evidence interactions with other professionals in support of your client’s affairs
* Support the provision of ongoing service

File note formats can include: rough notes, templated notes, calculations, diagrams, emails, letters & client/3rd party documentation.

Typically, file notes should be sprinkled liberally throughout the client file.

If a file noted matter is significant, or anticipated to be evidence in a potential dispute:

* It must be as current as possible.

This helps to support the accuracy of the adviser’s memory of events

* It must be comprehensive.

In any situation, file notes are best:

* dated

(when they were produced; or when they were read/filed; or when they were actioned)

* time stamped \_ manually or otherwise (optional)

(when these notes were produced by the Adviser)

* initialled

(to evidence that 3rd party communications have been noted by the Adviser and/or actioned). This is particularly important if administrative staff are involved in maintaining a client file.

If a file note has been produced after the date to which it refers, it must not be back-dated.

Strong file notes, that can be shown to be a routine part of your advice process, are a strong submission in your defence should a dispute arise.

## **Financial Services Guide**

When a new prospect meets with you for the first time, the current FSG issued by the Licensee must be provided. This must be recorded on the prospect file.

When an existing client has a fresh ‘advice’ or ‘advice service’ interaction with you, and they have not yet received the FSG that is current at that time, this newer FSG must be provided. This must be recorded on the client file.

A ‘fresh interaction’ may be understood to be a meeting, phone call, exchange of emails, provision of a portfolio valuation … associated with the actual giving of advice, or in anticipation of giving advice or facilitating the implementation of advice already given.

It is not required to be supplied in a non-advice context.

For example:

- a periodic Newsletter is supplied as part of a service agreement.

- you simply onsend a copy of a product provider’s acknowledgement of a new account.

If fees (FDS, renewal notice) are the source of the interaction, then a FSG must be provided. This must be recorded on the client file.

## **Record of Advice**

Use *InterPrac Record of Advice (ROA) - <Date> (word)* template.

A Record of advice must disclose the <date> of the previous SoA that it is referencing.

It is legitimately used for investment switching, minor changes to existing insurance policies.

If the RoA introduces new advice, then it is an invalid use of this tool.

For example, the reference SoA was set up an ‘accumulation’ super account; the new advice is to now start a super ‘pension’ with that balance.

The RoA is legitimised by:

* It’s close strategic connection to the reference SoA
* The implication that all relevant client information impacting the disclosed change has not altered since the <date> of the reference SoA.

The longer the elapsed time between SoA and RoA, the less likely that unchanged client circumstances can be just assumed. If this assertion is made in the RoA, it should be backed up with other proofs in the file eg. updated fact find.

## **Incorporation By Reference**

Not a separate Advice template but a more time-effective solution to ‘extra’ advice that is strongly, strategically related to a preceding SoA.

It too assumes that all relevant client information impacting the fresh advice has not altered since the <date> of the reference SoA.

Check with the compliance staff before relying upon this principle.

## **Advice that is Not Appropriate**

That Advice be ‘Appropriate’ is the most fundamental requirement; more fundamental than even Best Interest.

Advice that is fraudulent, deceptive, misleading or seriously incorrect leaves the Client in a worse position than before; especially if Fees are charged for that advice.

However, some Inappropriate advice may simply be ill-conceived and subtler in the negative outcome that it promotes.

For example, the strategic (tax arbitrage) merit of the TtR income replacement strategy was reduced from 1 July 2017 when the TtR pension lost tax exempt status on earnings.

As a result, for the diminishing cohort of eligible Australians between Preservation Age and 60, the net benefit of any extra salary sacrifice is:

|  |  |
| --- | --- |
| **Marginal Tax Rate** | **Net benefit per $1 salary sacrifice 1** |
| < $18,200 | Negative benefit |
| < $37,000 | 0.63 cents |
| < $87,000 | 3.20 cents |
| <$180,000 | 4.20 cents |
| >$180,000 | 6.40 cents |

1. *Assumes the income stream is 100% taxable taxed component.*

If an adviser was to charge $2,200 Plan Preparation fee for this strategy, recommending salary sacrifice of $10,000 to reduce assessable income from $80,000 to $70,000 (say) per annum for 2 years, the client would only be better off by $320 per annum.

The better arbitrage at the higher MTRs is severely offset by the concessional contributions cap.

## **Gearing / Margin Loan / LRBA**

Investment loans (equity, margin, personal, mortgage) can be appropriate for some clients.

The strategy must be relevant to the “Client Voice” and not contrived to the adviser’s benefit.

When considering whether the recommendation of an investment loan is in the Best Interests of the client, the minimum hurdles are:

* Assessment of Unsuitability (s985F Corps Act)

A formal determination of whether a loan facility will be ‘unsuitable’ for the retail client if the facility is issued, or the limit is increased.

This assessment must be reflected in the SoA within 90 days prior to implementation.

Our standard SoA template provides some explicit sectional prompts for this requirement: benefits gained/lost, risks of the advice, further consequences, alternative strategies considered.

* Reasonable inquiries about the retail client (s985G Corps Act)

Whilst this implies both a comprehensive Fact Find and detailed client/product research, it also encompasses ‘affordability projections’.

Such projections must incorporate the potential effects of an increased interest rate.

At InterPrac, this increase is to be 3% above the actual rate that will be disclosed in the SoA.

This projection, depending upon complexity, can appear in the Appendix but must be referred to explicitly in the body of the SoA.

**Margin Lending**

Typically, the ability to meet margin calls with sufficient surplus cashflow, must be demonstrated.

It is important that more than one increase in interest rates be evidenced by calculation.

At InterPrac, the increase(s) projected must include ‘3%’ above the actual rate disclosed in the SoA.

**Limited Recourse Borrowing**

Whilst this isn’t a personal borrowing under the above sections of the Act, recommendations indicating a specific/minimum loan amount should be addressed for ‘affordability’.

This affordability is in the context of the reasonably foreseeable responsibilities of the Trustees to provide retirement/pension benefits and liquidity for fund expenses.

Whilst a projection may not always be necessary, a clear indication of how upcoming liabilities will be met is crucial.

An indication that is too broad eg. ‘using future employer contributions’ would be insufficient.

However, ‘future employer contributions of $300 pf for the next 10 years until retirement’ could be sufficiently specific given a suitable context.

Ideally, a projection over the expected life of the LRBA arrangement would be included in the SoA Appendix.

## **Implementation Only ‘advice’ (transaction service) (nil advice) (execution only)**

This is not really ‘advice’ at all. The client directs in detail a particular implementation and the Adviser agrees to facilitate. An Adviser is not obliged to facilitate especially if the direction is inappropriate or risky.

Use *InterPrac Execution Only (Transaction Record) - <Date> (word)* template.

It must never be the norm for client interactions.

The use of ‘Execution Only’ documentation implies a process has been undertaken:

1. The client’s ‘direction’ must not be contrived.

1. It must be comprehensively documented in an accompanying file note by the adviser

* detailing the exact client requirement; nil extrapolation
* why the client explicitly refused the adviser’s explicit recommendation to seek formal written advice\*\*

1. Ideally, a ‘pre’ communication to the client (email is fine) that reinforces that the adviser has been asked to prepare an advice on <such & such> at the client’s specific direction.

1. In some cases, this communication may need to disclose any shortfall in the client’s ‘direction’ that hinders a practical implementation.

In that case, genuine General Advice, with disclaimer, can be used to help a client understand.

However, the client must then initiate any augmented direction … the process effectively restarts from #2

1. Once the client’s directions are clear and practically able to be implemented without more information, the use of the Transaction Record may proceed

               The *InterPrac Execution Only (Transaction Record) - <Date> (word)* will indicate all needful disclosures.

               It must be signed off by the client before transactions are implemented.

1. Implementation cannot in any way exceed the details of the directed advice … no extrapolation by the adviser that allows a practical implementation is allowed.

Otherwise it’s personal advice and requires a Statement of Advice.

\*\* Assuming that the area of advice is one that the Adviser is licensed to provide.

## **SMSF Advice**

See also Cover letter, Cover page.

1. **Trustees vs Members**

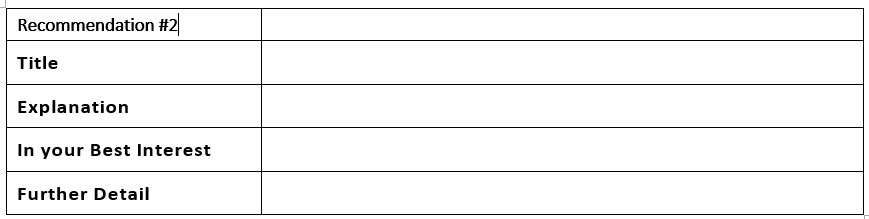
Advice must differentiate between advice given to a Member and that given to Trustees.

It is sufficient to manually insert some extra sub-headers into the SoA.

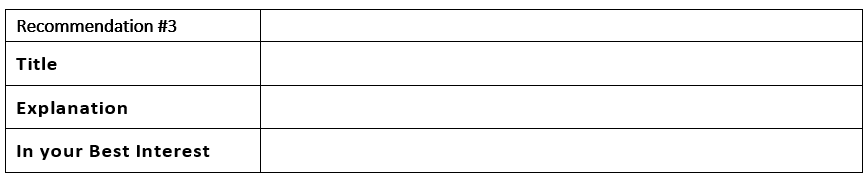
For example, picture the SoA:

**As Trustees:**





**As Members:**



1. **Risk Profiling vs Investment Strategy**

Risk Profiling is a Member issue; Investment Strategy is a Trustee responsibility.

A SoA addressed to SMSF Trustees should use the Member risk profiles to justify a defensible Investment Strategy. The former could not substitute for the latter.

**Example:** Both client and spouse are Balanced (60% Growth assets)

“Despite the clients individually presenting as Balanced, the fund can justifiably represent the overall asset allocation as Growth. This is because the Fund’s investment horizon is at least 20 years and this allows more than sufficient time for the asset pool to reliably meet its investment mandate.”

**OR**

“The fund should represent its overall asset allocation as the weighted average of the member balances and their respective Member risk profiles.

This is calculated to be <<result>>.”

**OR**

“Given that the fund has been created primarily to purchase a business premises, the overall investment mandate may be reasonably weighted to the ‘Property’ asset class.

However, as the fund requires liquid cash for operating purposes, the overall asset allocation should ‘5% Cash’, ‘90% property’ and ‘5% Other’ as a purchase opportunity may present.

The provider of the Investment Strategy documentation will suggest appropriate +/- %’s around each of these asset classes to ensure variations in future asset valuations do not inadvertently invalidate the Investment Strategy tool.”

1. **A pre-existing investment strategy:**

The asset allocation in the Investment Strategy table may allow ‘everything’ generally and therefore support ‘nothing’ specifically.

|  |  |
| --- | --- |
| **Asset Class** | **Fund’s Mandate**  **Strategic Allocation** |
| Cash | 0 – 100% |
| Fixed Interest | 0 – 100% |
| Australian Shares | 0 – 100% |
| International Shares | 0 – 100% |
| Property (listed) | 0 – 100% |
| Property (direct) | 0 – 100% |
| Other | 0 – 100% |

Presented with this scenario, the adviser must nevertheless make Member level recommendations using InterPrac’s maximum variance per asset class “+/- 10%”.

## **Transferring a Client from Another Licensee**

1. If you are transferring a previous client that was not yours from another Licensee:

* Full advice, fact finding, FSG, AML-CTF will be minimally required
* Fresh Implementation documentation will be required

OR a Change of Adviser document (as appropriate)

* New fee arrangements must be disclosed in writing

1. If you are transferring a previous client of yours under a previous Licensee:

* Fact finding, FSG, AML-CTF will be minimally required
* Fresh Implementation documentation will be required
* OR a Change of Adviser document (as appropriate)
* New fee arrangements must be disclosed in writing

As a principle, any compliant advice documents (SoA, RoA) produced under the previous Licensee need NOT be rewritten/reproduced under our Licence.

However, if there’s outstanding implementation, previous advice documentation cannot be relied upon if:

1. The previous advice document(s) is/are too old

Would the ‘reasonable man’ regard that the client’s relevant personal circumstances could have changed.

1. Will that Implementation require some change to the strategy?

For example, the previously recommended portfolio has a non-approved product and InterPrac’s approval cannot be obtained.

1. Will that Implementation require additional, material information disclosure?

For example, if the previous SoA superficially referenced a potential ABP; then full ABP disclosures (fresh SoA) would need to precede any new ABP Implementation.

Assuming 1-3 do not apply, and given there is outstanding implementation:

1. A comprehensive file note is minimally required.

This would include: highlights of discussion with the client, confirmation that relevant personal circumstances haven’t changed & some indication that the client permitted the implementation.

The latter will be reinforced by the signed implementation documentation.

1. If a client of another InterPrac AR is being transferred to you, ‘B’ applies; with the exception of:

* Only an FSG will be minimally required; fact find may need updating
* Minimally, a Change of Adviser document will be required for existing platforms if that platform references the AR and not the CAR.

**Change Of Adviser Authority (CoA)**

This authority should be used with care:

* It isn’t a substitute for an Authority To Enquire
* It may access a fee stream which will then require a level of service as ongoing justification
* If a client renegs on the SoA Authority to Proceed, then the CoA must be undone and, in some cases, fees/commissions received may need to be rebated. The new adviser may be responsible for commission clawback.
* The ongoing responsibility for portfolio decisions made by another adviser can be blurred. The new adviser has a duty of care to ensure inherited investments remain appropriate.