

The how-to guide for a realistic, appropriate and compliant SOA

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Christina Kalantzis is the founding Director of Alexis Compliance and Risk Solutions, a financial services compliance and risk management firm based in Sydney. She has over 20 years experience in the financial services wealth management and distribution industry and extensive risk management and compliance experience. She provides advice to ASX listed companies on Financial Services Reform (FSR) and the Future of Financial Advice Reforms (FOFA) compliance, investment and risk management issues. She was a member of the FOFA Treasury working committee convened by the Rudd and Gillard government throughout 2007 – 2012. She recently managed one of Australia's largest Financial Planning Enforceable Undertakings. She managed the first FSR Adviser banning 2005, represented Advisers in Westpoint/ ASIC banning hearings, was an industry expert to ASIC and the ACA as part of the Quality of Advice Survey 2002, and the FFW's head project manager for FSR, privacy and fee disclosure. She has also managed AFSL product and unit pricing breaches. Christina is a published author and speaker on compliance, corporate governance and risk management planning, her work has been published by Asset, BRW, Money Management, IFA, Sydney Morning Herald, The Australian and the Australian Financial Review. Christina holds a Master of Laws and Legal Practice, a Masters Degree in Banking and Finance, a Bachelor of Commerce, and a Foundation Diploma in Financial Planning.



How - to guide for a realistic, appropriate and compliant SOA.



1. What does compliant Advice look like in 2019?
2. ASIC and AFCA expectations?
3. Your Licensees and Clients expectations?
4. Preparing the SOA
5. Client Record keeping and management

What does compliant Advice look like in 2019?

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1. Hayne Royal Commission – 4 February 2019
2. ASIC Report 576 – Member experiences with SMSF (June 2018)
3. ASIC Report 562 – Financial Advice: Vertically integrated institutions and COI (Jan 2018)
4. ASIC Report 515 – Financial Advice: Review of how large institutions oversee their advisers (March 2017)
5. ASIC Report 499 – Financial Advice: Fees for no service (Oct 2016)

What does compliant Advice look like in 2019?

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Fee for No Service

'Fees for no service', which Mr Kell describes as a "term ASIC came up with to describe a situation where a customer is paying ... an ongoing service fee to a licensee but the service attached to that fee is ... not provided".

What does compliant Advice look like in 2019?

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Best Interest Duty

- Nine out of 10 pieces of SMSF advice reviewed by ASIC across 137 difference licensees did not comply with the best interests duty, Mr Kell said.
- Ms Orr noted that 90 per cent is a "very high figure", asking Mr Kell to give his assessment of the finding.
- "It's very disappointing to say the least," Mr Kell said. "I should note that for the majority of those files there is no necessary indication that that immediately signals consumer detriment. There is a smaller percentage where consumer detriment is apparent."

What does compliant Advice look like in 2019?

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Advice and Audit Practices

Examining 200 sample customer advice files from the big four banks and AMP, ASIC found that in about 10 per cent of cases "it was readily apparent that customers were likely to be significantly worse off as a result of following the advice".

"We were significantly concerned because, for these customers, switching to the new superannuation platform resulted in inferior insurance arrangements and/or a significant increase in ongoing product fees – without additional benefits being identified that were consistent with the customer's relevant circumstances," the report noted.

What does compliant Advice look like in 2019?

#INC2019



Advice and Audit Practices

"For the balance of the files (i.e. 65 per cent), the fact that customer files reviewed were non-compliant does not mean that the advice, if implemented, would result in negative outcomes," the report said. "However, these files did not demonstrate that the customer would be in a better position following the advice."

ASIC and AFCA expectations?

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Compliance:

- a. To act in the best interests of your clients – s961B(1)
- b. To have a reasonable basis for the advice – s961G
- c. The obligation to provide an SOA – s946A
- d. The main requirements of an SOA – s947C
- e. to provide appropriate replacement product advice – s947D
- f. Record Keeping obligations

ASIC and AFCA expectations?

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Failure of (a) - (f).... May mean..

....By reason of the following matters, it appears that you may not have the ability, professional skills and knowledge to competently provide financial services; and

....ASIC is concerned that it may have reason to believe that you are likely to contravene a financial services law.

Your Licensees and Clients expectations?

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1. The best interest duty
2. Fee Disclosure
3. Replacement Product
4. Risk profile
5. Diversification

Preparing the SOA

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Table of Contents (Part 1)

- Summary of my recommendations
- About you
- What you want
- My advice
- Overview of recommended products
- Consequences of my advice

Preparing the SOA

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Table of Contents (Part 2)

- Why my advice is in your best interests and appropriate
- What you should know about my advice
- How to follow my advice
- Fee Disclosure
- Authority to proceed

Preparing the SOA

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What my advice covers (part 1)

As agreed, I am providing a full review of your personal insurance needs to ensure your family has adequate financial support in the event of death, disability or illness. Specifically, my advice aims to:

- ensure you are fully protected in the event of premature death, disablement, serious illness or injury as detailed in the 'What you want' section above
- recommend appropriate types of insurance
- recommend how to pay for the insurance premiums

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What my advice covers (part 2)

- recommend superannuation contribution strategies to offset the effect of insurance premiums on your retirement benefits
- inform you of the impact of these arrangements on your cash flow and your superannuation benefits
- recommend that you make appropriate death benefit nominations so your superannuation assets and insurance cover are passed on in accordance with your wishes and needs.

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What my advice does not cover

My advice is limited to the above, and does not cover:

- any other aspect of your financial affairs (including child insurance)
- the suitability of your existing superannuation arrangements
- whether you will have enough superannuation for your retirement

> I can give advice about these if you want it, for an additional cost

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My advice is limited

I am able to recommend products from the Planforit approved product list (APL) and products that are not on the APL. If I recommend a product that is not on the Planforit APL, I must seek approval from Planforit.

- The Planforit APL is put together by a Planforit research team and is regularly reviewed. Ask me for a copy of the list, if you are interested.
- When I prepared your advice, I looked only at products on that list and at your existing products.
- I did not look at other products available on the market.
- My advice expires on 30 April 2019.
- You should not rely on my advice after that time, if you haven't acted on it by then.

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Continuing review service

I recommend that your needs and products be reviewed at least once a year to accommodate changes to your personal goals or circumstances such as births, marital status, employment, debt levels, tax implications of insurance, etc.

> If you wish to participate in an ongoing review service, please let me know and I can provide details of services and costs available.

Source: ASIC Media Release, Wednesday 31 May 2017, 17-163MR ASIC consults on new example Statement of Advice for life insurance.

Preparing the SOA

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- Have you identified the **subject matter** of the advice?
- If the client has provided you their instructions, have you considered what's in their best interest?
- Have you made client **inquiries** that would reasonably be considered **relevant** to the subject matter?

Preparing the SOA

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- Have the client's financial and personal **goals and objectives** been identified and documented as **clear, measurable** and in the **client's own words**?
- Have you documented **sufficient, accurate** and **relevant information** on which to base your personal advice?
- Have you asked the right questions if there are any obvious **omissions and inconsistencies** in the client information you have collected?

Preparing the SOA

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- If after making all reasonable inquiries and the client information is still **inaccurate or incomplete**, have you provided a verbal and written **warning**?
- Have you a documented **clear scope of advice** that you have discussed with the client (i.e. what's IN and what's OUT of scope)?

Preparing the SOA



- Do you have the right skills, knowledge, **competencies** and authorisation to give the advice?
- Where a client's need is not addressed or is **not achievable**, is there adequate documented reasons addressing why the advice is limited or not achievable?
- If it would be reasonable to consider recommending a **financial product**, have you conducted a **reasonable investigation** into the financial products that might achieve the client's objectives?

Preparing the SOA



- If you are recommending a financial product, have you **assessed the product information** gathered above? i.e.
 - Check that an appropriate product is available on our APL;
 - Obtained, read and understood the PDS and/or external research; Considered the benchmarking if a related product or service; You completely understand this product;
 - Documented the alternative products and strategies, and
 - The product meets the client's objectives?

Preparing the SOA



- Have you demonstrated that you have **prioritised the client's interests**?
- Based on **all judgements** made above, have you assessed the appropriateness of your proposed advice based on the client's relevant circumstances including their objectives?
- Is the advice you have provided **'Quality Advice'** (what would a reasonable adviser think)?

Preparing the SOA

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- Has your advice placed the client in a **better position**? Does the SoA identify the client's objectives in quantitative terms and explain how the advice would achieve those objectives.
- Have you presented the financial planning recommendations and the supporting rationale in a way that allows the client to make an **informed decision**?
- At all times, have you acted in accordance with high standards of professional and ethical conduct?

Preparing the SOA – SMSF

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SMSF Disclosure of risks (INFO 205)

The risks that should be considered by the adviser and disclosed to the client when providing personal advice about SMSFs, include

- the lack of statutory compensation
- the impact on insurance
- access to complaints mechanisms

Preparing the SOA – SMSF

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SMSF Disclosure of risks (INFO 205)

The risks that should be considered by the adviser and disclosed to the client when providing personal advice about SMSFs, include

- trustee obligations and the time and skills necessary to operate an SMSF
- trustee obligations to develop an investment strategy
- the need to consider an exit strategy

Client record keeping and management

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The financial services licensee must ensure the records required to be kept by this section:

- (a) are **kept for 7 years** after the day the personal advice was provided to the client; and
- (b) are accessible by the licensee at all times during that period in a way that enables the licensee to produce the records.

This obligation continues to apply even if the financial services licensee ceases to be a financial services licensee during the period that the records are required to be kept and accessible.

Source: Class Order [CO 14/923] Record-keeping obligations for AFSL when giving personal advice.

Client record keeping and management

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Para 39. It appears that you failed to identify the objectives, financial situation and needs of Mr XXXX that would reasonably be considered as relevant to advice about personal insurances because there is no record you:

- 39.1 inquired what Mr XXXX's cash flow was; or
- 39.2 inquired about his history of premium payments difficulties

Client record keeping and management

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Para 40. It appears that you have failed to conduct a reasonable investigation into financial products that might achieve Mr XXXX objectives and meet his needs that would reasonably be considered as relevant to advice because:

- 40.1 there is no record of product investigation on file; and
- 40.2 you failed to investigate whether IP insurance was available through Mr XXXX's OnePath superannuation.

Disclaimer

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Please note this presentation is to be considered as general advice only. The opinions of the presenter should not be relied upon as providing specific advice to you or your clients.

The information contained within this presentation is based upon our understanding of the relevant legislation, regulations and other materials as at February 2019.
