

# Mortgage broker best interests duties wide reaching

<https://www.moneymanagement.com.au/news/financial-planning/mortgage-broker-best-interests-duties-wide-reaching>



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**Licensees are now under best interests duty for all its credit representatives' business, and best interests duty also applies to the entire business of a mortgage broker, and these rules could apply even if the credit assistance does not relate to a mortgage, according to The Fold Legal.**

An analysis by the Fold's solicitor director – Sydney, Jaime Lumsden, said the mortgage broker's best interest duty came into effect on 1 January, 2021.

This applied to a licensee providing credit assistance where the licensee was a mortgage broker or a credit representative providing credit assistance where either the licensee or the credit representative was a mortgage broker.

Lumsden noted the definition of a mortgage broker was one that:

- Carried on a business of providing credit assistance in relation to credit contracts secured by mortgages over residential property;
- Did not perform the obligations, or exercise the rights, of a credit provider in relation to the majority of those credit contracts; and
- In carrying on the business, provided credit assistance in relation to credit contracts offered by more than one credit provider.

Examples, she said, of situations where best interest duty would apply even if the product was not a mortgage were:

- Someone who met the definition of mortgage broker advising on personal loans and credit cards;
- A broker offered their own product but they broker more than half their business;
- A credit representative of an aggregator provides credit assistance on any product (even if none of it is home loans) where the aggregator meets the definition of a mortgage broker; and
- A mortgage broker passes an application to an asset finance broker in such a way that the mortgage broker is providing credit assistance and not just acting as an intermediary. In this instance, the best interests duty will apply to the credit assistance the mortgage broker provides. But it will only apply to the asset finance broker if they (or their licensee) meet the definition of mortgage broker.