

Guidelines for Handling Customers Who Lack Mental Capacity

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A. Purpose and Scope

1. These guidelines are intended to:
 - a. safeguard the interests of customers who may lack mental capacity to make banking decisions;
 - b. provide guidance to front-line staff on:
 - i. indicators that a customer may lack mental capacity;
 - ii. how to support and assist customers with declining mental capacity;
 - iii. indicators that such a customer may be subject to Financial Elder Abuse; and
 - iv. how suspected cases of financial abuse of customers who lack mental capacity should be handled.
2. These guidelines will apply to all banking accounts held by individual customers regardless of age.
3. Loss of mental capacity may be caused by dementia, a stroke or an accident. Loss of mental capacity may also be caused by various other diseases and conditions. However, it is important to note that a loss of mental capacity is not necessarily associated with old age or any particular disease. Certain young individuals may lack mental capacity and their rights should be protected under these guidelines.

B. Background

1. Demographic projections show that by 2030, one in five persons in Singapore will be elderly¹. This makes Singapore one of the fastest ageing populations in Asia.
2. As more people suffer from dementia, there is a need for legislation to balance a person's right to make his own decision with the need to protect him when he lacks the mental capacity to decide.
3. To address this, the Mental Capacity Act (MCA)² was passed on 15 September 2009 and officially came into force on 1 March 2010.

¹ Population older than 65 in Singapore from 2015 to 2035 - <https://www.statista.com/statistics/713663/singapore-forecast-aging-population/> or you may also refer to [file:///C:/Users/staff/Downloads/Ageing%20Families%20Report%20Insight%20Series%2020151124%20\(1\).pdf](file:///C:/Users/staff/Downloads/Ageing%20Families%20Report%20Insight%20Series%2020151124%20(1).pdf)

² Mental capacity act (MCA) - <https://www.publicguardian.gov.sg/opg/Documents/CSC.MSF.OPGWebsite/Documents/CodeOfPractice.pdf>

4. The Office of the Public Guardian (OPG) “safeguards the interests of persons without mental capacity and support proxy decision makers within the framework of the MCA”. The OPG is a division of the Ministry of Social and Family Development..
5. The MCA allows for a Lasting Power of Attorney (LPA) to be made to appoint proxy decision maker(s) (i.e. called a Donee³) to act on behalf of an individual (i.e. called a Donor⁴) in the event that he loses mental capacity. This may include managing the individual’s banking accounts and other financial matters. This may also include managing the “personal welfare” of the donor but this is irrelevant for the purposes of making banking decisions.

C. Definition of Lack of Mental Capacity

1. As defined under Section 4 (1) of the MCA, “a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain”.
2. Lack of mental capacity cannot be established merely by referencing:
 - a. a person’s age or appearance; or
 - b. a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about his mental capacity. For example, a person who has had a stroke or who is suffering from dementia may not necessarily lack mental capacity. For more examples, please refer to Code of Practice Mental Capacity Act⁵ under section "Types of Mental Incapacity".
3. A person is unable to make a decision for himself if he is unable to fulfil one of the following conditions:
 - a. understand the information relevant to the decision;
 - b. retain that information;
 - c. use or weigh that information as part of the decision-making process; or
 - d. communicate his decision (whether by talking, using sign language or any other means).
4. Mental incapacity can be permanent, temporary or fluctuating.

³ Appointed by an individual to act and make decisions about his personal welfare and/or property and affairs matters, on his behalf, when he lacks mental capacity.

⁴ A person signs which allows him to choose one or more persons called donees to make decisions about his personal welfare and/or property & affairs matters on his behalf when he lacks mental capacity

⁵ <https://www.publicguardian.gov.sg/opg/Documents/CSC.MSF.OPGWebsite/Documents/CodeOfPractice.pdf>

D. Assisting Customers with Declining Mental Capacity

1. Sometimes, customers with declining mental capacity may not even be aware of the fact.
2. If a customer displays some of the following red flag signs, it may be indicative of his declining mental capacity:
 - a. struggles to recall recent transactions;
 - b. disorientated with regards to times and dates;
 - c. engages in repeated banking activity within a short space of time;
 - d. appears to have forgotten how to use an ATM;
 - e. frequently forgets his PIN;
 - f. appears to have difficulties in finding his bank passbook;
 - g. accompanied by another person who does most of the talking while he seems to be staring into space; or
 - h. accompanied by another person who seems to be exerting some pressure or influence on him.
3. If a customer shows signs of declining mental capacity and front-line staff are aware, or suspect it, the bank staff should take the appropriate actions in Section G on the handling process to assist the customer.
4. At all times, front-line staff should not disclose customer information to any third other party.

E. Definition of Financial Elder Abuse

1. Front-line staff should be aware of financial elder abuse given that the elderly are more susceptible to dementia and possible financial abuse. Financial elder abuse refers to one of the following situations:
 - a. when any person or entity takes, appropriates or retains real or personal property of an elderly person or dependent adult with the intent to wrongfully use or defraud, or who assists in doing so.
 - b. the perpetration of a crime against elderly persons and dependant adults, who may be especially vulnerable due to physical or mental incapacity.
 - c. when a donee abuses his power under the Lasting Power of Attorney (LPA) while acting on behalf of the donor
2. Abusers are:
 - a. most likely to be relatives and caregivers. Gender seems to make little difference; and
 - b. less likely opportunistic strangers who befriend the older person or who make contact through a scam.

3. Abusers often have a sense of entitlement which may come from:
 - a. a belief that as they would or should inherit an asset eventually, they might as well obtain the benefit sooner rather than later;
 - b. seeking to protect their perceived inheritance by not incurring expenses even though these are necessary for the health and well-being of the older person;
 - c. a belief that they are entitled to reimbursement for care-giving; or
 - d. a belief that because they have been abused in the past, they are entitled to settle old scores.

Note: For the purpose of defining “financial elder abuse”, “elderly” refers to persons aged 65 and above. According to medical experts, 65 is the common onset age for dementia. Behavioural and psychological symptoms of dementia are documented in this study.⁶ However, this does not mean that people under 65 do not suffer from dementia.

F. Red Flags or Warning Signs that Front-line Should Look Out For
There are a number of cues that can arouse suspicion:

- anomalies in bank account including large cash withdrawals,
- sudden changes in bank account or banking practice,
- unexplained withdrawals from a savings account,
- changes in third party involvement

Note: The above list is some warning signs as highlighted by Age UK⁷, a UK charity. Front-line staff are encouraged to exercise initiative and due diligence in identifying customers who may not exhibit the above signs but may still be subject to financial abuse.

⁶ https://www.cfps.org.sg/publications/the-singapore-family-physician/article/50_pdf

⁷ <https://www.ageuk.org.uk> Financial Abuse Evidence Review

G. How Should Front-line Staff Handle Suspicious Cases?

- a. Front-line staff should seek to establish the reason for large transactions or unusual withdrawals.
- b. Front-line staff should check authorisation and documentation before acting for the customer.
- c. Front-line staff who suspect financial abuse should alert a supervisor immediately.
- d. Front-line staff may choose to explain to the customer that a supervisor must review large or unusual transactions.
- e. If front-line staff observes that there is some element of undue influence exerted by a third party on the customer, the staff should interview the customer in private to ascertain the real intentions of the customer. The interview should be conducted in a language medium that the customer is familiar with.
- f. The interview should be conducted by at least two bank staff. This would serve to ascertain the observations of each staff and avoid any allegations that their observations were erroneous or unwarranted.
- g. Front-line staff should exercise judgment and establish if language barriers exist in the first place. If so, any further communication with the customer should be made in a language the person is familiar with. Such communication should also seek to verify whether the person is under duress.
- h. Once the front-line staff ascertains that there are valid doubts about the customer's mental capacity, the staff should alert a supervisor and tactfully advise customer to have his mental capacity formally assessed by an accredited general practitioner or a medical specialist in mental health.
- i. Pending the outcome of the formal assessment of mental capacity and/or appointment of deputy by the court, banks may freeze customer's account.
- j. Essential payments needed for the well-being of the customer should not be restricted e.g. medical/health care expenses, household expenses.
- k. For customers who have made an LPA, front-line staff should:
 - i. request for the original copy of the LPA (or a certified true copy from the OPG); and
 - ii. check www.publicguardian.gov.sg to confirm that the LPA number is valid and has not been revoked;
 - iii. verify the power(s) given to the donee/s i.e. personal welfare and/or property & affairs matters;
 - iv. If more than one donee is appointed, whether they are to act jointly or jointly and severally.

H. Policies, Procedures and Training

- a. Banks are advised to implement policies and procedures for handling customers who lack mental capacity taking into consideration their operational needs, business requirements and risk management practices. Please refer to <https://www.abs.org.sg/consumer-banking/consumers/handling-mental-capacity-act---lasting-powers-of-attorney-court-deputies> for more information.
- b. Banks are advised to train their front-line staff to identify customers who lack mental capacity so that their front-line staff is empowered to handle suspicious cases.
- c. Banks can contact the OPG to be briefed on the MCA and LPA or for any clarifications. Banks are encouraged to contact the OPG at their hotline 1800 226 6222 or enquiry@publicguardian.gov.sg.
- d. Additional resources
 - LPA registration: <https://www.msf.gov.sg/what-we-do/opg/lasting-power-of-attorney/how-to-make-a-lasting-power-of-attorney>
 - How to use the LPA: <https://www.msf.gov.sg/what-we-do/opg/lasting-power-of-attorney/using-a-lasting-power-of-attorney>
 - Link to medical report template: <https://www.msf.gov.sg/what-we-do/opg/resources/forms> (under Other Useful Forms For LPA)
 - List of revoked and suspended LPAs: <https://www.msf.gov.sg/what-we-do/opg/resources/revoked-and-suspended-lpas>
 - Information pertaining to the application as a deputy to make decisions on behalf of a person who lacks mental capacity can be found at the Family Justice Courts website: <https://www.judiciary.gov.sg/family/deputyship>