

## 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 on their own;
  - 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 irrespective of age.
3. Loss of mental capacity may be caused by dementia, a stroke or an accident. Lack of mental capacity is not necessarily associated with old age. Certain young individuals may lack mental capacity (e.g. a young woman who is unable to speak and not responsive to speech after an accident) and should be accorded protection under these guidelines.

### B. Background

1. Demographic projections show that by 2030, one in five persons in Singapore will be elderly. This makes Singapore one of the fastest ageing populations in Asia.
2. With the consequent increase in persons suffering from dementia, there was a need for legislation to balance a person’s right to make his own decision versus the need to protect him when he lacks mental capacity to make decisions.
3. To address this, the Mental Capacity Act (MCA) was passed on 15 September 2009 and officially came into force on 1 March 2010. For details on the MCA, please refer to the Office of the Public Guardian (OPG)’s website at <http://www.publicguardian.gov.sg>.
4. The OPG administers the MCA. The OPG is a division of the Ministry of Social and Family Development (“MSF”).

5. The MCA allows for a Lasting Power of Attorney (LPA) to be made to appoint proxy decision maker(s) to act on an individual's behalf in the event that he loses mental capacity. This may include managing the individual's banking accounts and other financial matters.

### **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 reference to:
  - 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.
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.

### **D. Assisting Customers with Declining Mental Capacity**

1. A person's mental capacity to make financial decisions may not disappear suddenly. 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 or her declining mental capacity:
  - a. Cannot 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 or her PIN; or
  - f. Appears to have difficulties in finding his or her bank passbook;

- g. Accompanied by another person who does most of the talking while he or she seems to be staring into space; or
  - h. Accompanied by another person who seems to be exerting some pressure or influence on him or her.
- 3. If a customer shows signs of declining mental capacity and front-line staff are aware, or think it possible, that a customer has not had a medical diagnosis, they may wish to gently seek the customer's consent to:
  - a. Inform his or her family of the customer's "red-flag" signs;
  - b. Inform the OPG, who can advise on the appointment of a deputy to make decisions on his or her behalf if he or she has not made an LPA; or
  - c. Refer his case to the Agency for Integrated Care (AIC) located at No 5 Maxwell Road #10-00 Tower Block, MND Complex (Tel: 6603 6800; Email: enquiries@aic.sg) which among other services, can provide mental health assessments and interventions.

#### **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 this crime against elderly persons and dependant adults, who may be especially vulnerable due to physical or mental incapacity.
  - c. When a donee<sup>1</sup> abuses his power under the Lasting Power of Attorney (LPA) while acting on behalf of the donor (i.e. the mentally incapacitated person).
- 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

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<sup>1</sup> Appointed by an individual to act and make decisions about his personal welfare and/or property & affairs matters, on his behalf, when he lacks mental capacity.

- 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 (Source: Overview of Dementia – What Is It? by Dr Christopher Chen Li-Hsian, Senior Consultant, Dept of Neurology, National Neuroscience Institute, Singapore General Hospital Campus). Please refer to Appendix for a non-exhaustive list of common symptoms of dementia.*

## **F. ‘Red Flags’ or Warning Signs that Front-line Should Look Out For**

1. The following ‘red flags’ or warning signs are adapted from The Australian Financial Ombudsman Services Bulletin, titled “Financial Abuse of the Vulnerable Older Persons”. The Bulletin lists 14 ‘red flags’ or warning signs that financial institutions could use as internal guidelines to detect financial elder abuse. The ‘red flags’ potentially visible to front-line staff include that the elderly customers / customers who lack mental capacity may:
  - a. be accompanied by an acquaintance to make a large or unusual withdrawal of cash;
  - b. be accompanied by a family member or other person who seems to coerce them into making transactions;
  - c. not be allowed to speak for themselves; the other party does all the talking (particularly in combination with either of the two above situations);
  - d. start to appear fearful (particularly of the person accompanying them) or withdrawn;
  - e. have withdrawal slips presented by a third party, with their signature on it but the rest of the slip filled out in a different handwriting;
  - f. have large withdrawals or transfers made on their behalf by a family member or other person;
  - g. not understand or be aware of the requested transaction or recently completed transactions;
  - h. give implausible explanations for or appear confused about what they are doing with their money;
  - i. engage in banking activity that is inconsistent with their ability such as apparent use of an ATM card despite the fact that they are housebound or in hospital;
  - j. engage in banking activity that is unusual, erratic or uncharacteristic;
  - k. suddenly register for internet banking when prior banking has been branch based and there has been no preliminary contact with the bank;
  - l. have unpaid bills that they should be able to afford to pay or complain that they are being evicted;
  - m. be concerned about missing funds or banking related documents;
  - n. indicate that mail is no longer being delivered to their home.

*Note: The above is not an exhaustive list of warning signs. 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.*

**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 observe 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 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 request for the 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 should freeze operation of the customer's account.
- j. Essential payments needed for the well-being of the customer e.g. medical/health care expenses, household expenses may be allowed at the discretion of the banks.
- 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](http://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 donees is appointed, whether they are to act jointly or jointly and severally.

## H. Policies, Procedures and Training

- a. Banks are advised to put in place policies and procedures for handling customers who lack mental capacity taking into consideration their operational needs, business requirements and risk management practices. Please click <https://www.abs.org.sg/docs/library/guidelines-lpa.pdf> 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 are empowered to handle suspicious cases.
- c. The OPG is prepared to present a brief on the MCA and LPA to all banks' staff. Banks are encouraged to contact the OPG to make the necessary arrangements. Please contact Ms Jolene Tan at email: Jolene\_Marissa\_TAN@msf.gov.sg or telephone: 6708 7806.
- d. Bank staff are advised to call the OPG's hotline: 1800 226 6222 if they require any assistance or clarification on the MCA and LPA. Alternatively, they may send their queries to the OPG's corporate email address: [enquiry@publicguardian.gov.sg](mailto:enquiry@publicguardian.gov.sg).
- e. Please find below the following links to OPG website for more information:
  - LPA registration: <https://www.publicguardian.gov.sg/opg/Pages/The-LPA-How-Can-I-Make-a-Lasting-Power-of-Attorney.aspx>
  - How to use the LPA: <https://www.publicguardian.gov.sg/opg/Pages/The-LPA-Using-a-Lasting-Power-of-Attorney.aspx>
  - Link to medical report template: <https://www.publicguardian.gov.sg/opg/pages/Forms.aspx>
  - List of revoked and suspended LPAs: <https://www.publicguardian.gov.sg/opg/pages/Resource-Revoked-and-Suspended-LPAs.aspx>

### Appendix: Behavioural and Psychological Symptoms of Dementia (BPSD)

<b>BPSD</b>	<b>Common Examples</b>
Anxiety	Repeatedly asking questions about an upcoming event Fear of being left alone Worries about their finances
Depressive Mood	Pervasive depressed mood or loss of pleasure Self-deprecatory statements Expressing a wish to die
Hallucination	Seeing people who are not there Hearing their name being called by a deceased person
Misidentification	Not recognising their image in the mirror Mistaking carers for other people Believing fictitious events on TV or radio to be real
Delusion	Belief that people are stealing things Belief that their house is not their home Belief that spouse or caregiver is an impostor Belief that spouse is unfaithful
Apathy	Lack of interest in daily activities Decrease in social interaction Decrease in emotional responsiveness Decrease in initiative
Negativism	Refusal to co-operate Resistance to care
Disinhibition	Crying Impulsiveness Verbal aggression Sexual disinhibition – stripping, masturbation

Sleeplessness	Night-time wandering
Agitation	Socially inappropriate verbal, vocal or motor activity which may include the following:
Physically aggressive behaviour	Hitting Pinching Kicking & biting Slapping Grabbing
Restlessness	Pacing
Screaming	Calling for help Asking to go home Cursing
Wandering	Shadowing/stalking of care-giver Aimless walking Excessive activity Repeatedly trying to leave the house

*Source: Behavioural and Psychological Symptoms of Dementia by Dr Ng Li-Ling, Senior Consultant, Division of Psychological Medicine, Changi General Hospital*