Mental Capacity Guidance

"Much consumer protection legislation is underpinned by the notion of the average or typical consumer, and what that typical consumer might expect, understand or how they might behave. However, consumers in vulnerable circumstances may be significantly less able to represent their own interests, and more likely to suffer harm than the average consumer. Regulators and firms need to ensure these consumers are adequately protected".

The FCA.

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Q – Can the customer make an informed decision?

Mental capacity is a person's ability to make a decision. Whether or not a customer has the ability to understand, remember, and weigh up relevant information will determine whether the customer is able to make a responsible borrowing decision based on that information.

Care should be taken not to confuse mental capacity with mental health problems as an individual with a mental health problem may be perfectly able to make an informed decision.

Firms should take appropriate measures to:-

1. **Identify if a customer may lack the mental capacity to make an informed borrowing decision**
2. **Ensure a customer is treated correctly if it is known or suspected that they may lack mental capacity**

A firm should assume a customer has mental capacity at the time the decision has to be made, unless the firm knows, or is told by a person it reasonably believes should know, or reasonably suspects, that the customer lacks capacity

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There isn't one strict list of indicators that a customer may lack mental capacity but the following are examples of reasonable indications:

- where a relative, friend, carer of clinician of the customer raises a concern.
- where you have reason to believe that the customer does not understand the information being provided or the risks involved.
- where the customer is obviously looking to borrow more than is affordable.
- if the customer is confused about any of the information being requested of them i.e. address, date of birth etc.

Common causes of mental capacity limitations are : mental health issues; dementia; learning disability; a developmental disorder; a neurological disability or brain injury; alcohol or drug (including prescribed drugs) induced intoxication.

A firm should not unfairly discriminate against a customer who it understands, or reasonably suspects, has a mental capacity limitation, in particular, by inappropriately denying the customer access to credit.

A dealership should have stated procedures in place to follow in the event that you know or suspect a customer may have limited mental capacity and is therefore vulnerable.

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What can you do?

- ✓ Ensure all information is clear and understandable.
- ✓ Make sure you have a complete understanding of the finance products.
- ✓ Provide customers with explanations on all funding options – including any risks and limitations. Be flexible in your approach to find a way of explaining that may be more adequate for the customer, i.e. visual representations may assist some customers.
- ✓ Ensure the customer has time to consider and ask questions (recognise when a customer may find it beneficial to take the information away to further consider before being pushed for a decision).
- ✓ Listen, study body language and ask questions so that you can be sure that the customer understands.
- ✓ If in doubt, refer to a manager for guidance.
- ✓ Work with your finance company to ensure they are provided with all possible information to make a fair lending decision with the customer's interest at heart.

In England, Wales and Northern Ireland if it can be shown that a party to a contract lacks mental capacity and the firm knew, or reasonably should have known, the contract may be unenforceable . In Scotland, the same applies except the firms knowledge is immaterial.