

Mental Capacity Guidance for Creditors – Quick reference guide

You should operate suitable business practices for identifying and dealing appropriately with borrowers who you understand or suspect may have mental capacity limitations.

Mental capacity explained

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

Mental capacity limitations are sometimes temporary (including fluctuating over time). Allowing borrowers to take information away with them and thus giving them time to consider explanations may enable them to make informed decisions at a later date.

Mental capacity is not the same as mental health, and someone with a mental health condition may still have the capacity to make informed borrowing decisions.

Indicators that a borrower may have a mental capacity limitation

There is no exhaustive list of indicators that may lead you to suspect that a borrower might have some form of capacity limitation. However, here are some examples from the guidance:

- they have a relative, close friend, carer or clinician who raises concerns with you
- they clearly do not understand what they are applying for
- they are clearly unable to understand the information and explanations you provide
- they appear confused about the personal or financial information you are seeking

Mental capacity and its relevance to borrowing/lending decisions

If you understand or suspect that a borrower might not have the mental capacity to make an informed borrowing decision, you should take appropriate steps to help you take a view as to:

- whether or not the borrower appears able to understand the information and explanations provided by you and then make an informed borrowing decision
- whether the borrower appears able to afford to make repayments under the credit agreement in a sustainable manner without adverse consequences to their financial circumstances and
- whether the credit the borrower is seeking is clearly unsuitable (even if otherwise affordable)

Appropriate practices and procedures

You should not discriminate against borrowers who are understood or suspected of having mental capacity limitations by unfairly/inappropriately denying them access to credit.

A borrower with a mental capacity limitation may be enabled to make an informed borrowing decision if you provide them with appropriate help and assistance. Your practices and procedures should be designed to assist such borrowers to overcome the effect of any capacity limitation and, to the extent possible, place them on an equivalent footing to borrowers who do not have such a limitation. At the same time you should also seek to ensure that you have appropriate protections in place to mitigate the potential risks to such potentially vulnerable borrowers.

Your primary focus should be on:

- providing borrowers with clear information and explanations about credit agreements and any associated risks
- giving borrowers adequate time to consider the information and explanations provided
- carrying out appropriately stringent assessments of the borrower's ability to afford to meet repayments in a sustainable manner (for example, don't place over-reliance on self-declared information provided by the borrower)

This quick reference guide is not a substitute for familiarising yourself with the OFT's Mental Capacity Guidance and with relevant legal requirements.

Mental Capacity – OFT guidance for creditors OFT 1373

www.of.gov.uk/about-the-oft/legal-powers/legal/cca/mental-capacity-guidance