
Vulnerability: a guide for lending

telephony, face-to-face, and online

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THE
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ASSOCIATION

 University of
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Research Centre

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Foreword

This guide provides lenders with a renewed focus, new insights, and new tools for working with customers in vulnerable situations.

It is the second guide from research funded by the Finance & Leasing Association and The UK Cards Association. It brings together new survey data collected from 1,666 staff who directly take customer credit applications in a representative sample of UK lenders.

Endorsed by the key industry associations, the guide aims to help lenders better identify and support customers in vulnerable situations *during* such credit applications.

Read in conjunction with our first publication – *Vulnerability: a guide for debt collection* – it also provides insights on vulnerability from across the credit cycle.

A renewed focus

The guide focuses on the experience of staff when working with customers who might exhibit a mental capacity limitation.

These customers can experience significant problems with understanding, remembering, and evaluating information about the credit product they are applying for, as well as other difficulties in communicating their decision.

Caused by conditions such as dementia and mental illness, other health problems and their treatments, as well as broader social issues like addiction, the issue of mental capacity has become an important one in regulatory and societal terms.

The subject of regulatory guidance from the Financial Conduct Authority, there is also a body of related UK law on contracting.

Furthermore, we have also seen wider public debates and openness about the underlying conditions which can result in limitations in mental capacity, and the support that can be given in such situations.

New insights

Consequently, in mid-2016, a representative sample of lenders contributed to research conducted by the University of Bristol aimed at expanding our understanding of the experiences of staff when working with customers with mental capacity and other decision-making limitations.

New research was also undertaken with lenders, brokers, and retailers in the intermediated credit sector to understand the challenges of mental capacity limitations when providing credit products in this area of lending.

Finally, this guide also considers online lending applications, and the potential steps that could be taken, to better identify and support customers with a decision-making limitation.

New tools

In this guide, we share both the results of this research, and the tools that can be used to address some of the highlighted challenges.

This includes the BRUCE protocol for identifying and supporting customers with a decision-making limitation, as well as new practical recommendations for intermediated and online lending.

We welcome the publication of this guide as another step forward on the wider work taking place on vulnerability, and thank all the participating staff and lenders that made these new insights and tools possible.

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Executive summary: what did we do?

GUIDE	<ul style="list-style-type: none"> • This guide explains how customers in vulnerable situations can be better identified and supported during applications for credit. • It covers telephony, face-to-face, intermediated, and online lending channels. • It primarily focuses on customers with mental capacity limitations, but also recognises that customers can experience other forms of decision-making difficulty. • The guide draws on new research from surveys, interviews, and discussions, and provides practical tools and recommendations on how lenders can take action. 	Introduction Page 4
DATA	<ul style="list-style-type: none"> • The guide is based on three sources of information about working with customers with mental capacity limitations (and other types of decision-making difficulty): <ol style="list-style-type: none"> 1 a survey of 1,666 staff responsible for taking credit applications from customers over the telephone or face-to-face in 18 UK secured and unsecured lenders 2 interviews and a roundtable with lenders, brokers, retailers, and agents involved in providing intermediated credit arrangements 3 broader discussions with lenders about online lending applications. 	Insight Page 15 Methodology Appendix 1
CONTEXT	<ul style="list-style-type: none"> • The context for much of this guide is the Financial Conduct Authority's <i>Consumer Credit Sourcebook</i> (CONC) and its guidance for lenders on mental capacity¹. • CONC provides a <i>main source</i> of guidance that brings together key information – including references to relevant aspects of UK mental capacity law, and important elements of previous Office of Fair Trading work² and translates this into recommended actions that lenders can follow. • While CONC is about consumer credit, secured lenders should also take an interest. This is because its detailed guidance on mental capacity supplements that contained in the Mortgage Conduct of Business Sourcebook³. 	Vulnerability, mental capacity and lending Page 8
WHAT THE GUIDE ADDS	<p>This guide, and the research that underpins it, aims to provide:</p> <ul style="list-style-type: none"> • practical detailed guidance which complements CONC • data on how often customers with decision-making limitations are encountered • insights into perceived challenges and positive practice on this key issue. 	Prevalence Page 16 Perspectives Page 19 Practice Page 22
FOCUS	<ul style="list-style-type: none"> • The guide primarily focuses on customers experiencing mental capacity limitations due to underlying health or related issues. These can result in customers having significant problems with understanding, remembering, and evaluating information about the credit product they are applying for, as well as communicating a decision about this. • The guide, however, also recognises that customers can experience other forms of decision-making limitations (including language and literacy issues) – this guidance will also assist on these. 	Vulnerability, mental capacity and lending Page 8
SURVEY SAMPLING	<ul style="list-style-type: none"> • We surveyed 1,666 staff in total, with 1,524 'frontline' and 142 'specialist' respondents. <i>This guide focuses on the experiences and views of the 1,524 'frontline' staff in general credit roles</i>, rather than the 142 'specialist' staff who primarily handled applications from customers in vulnerable situations, sensitive cases, or third-parties. • These staff were selected from a sample of 18 UK secured and unsecured lenders. 	Methodology Appendix 1

Full data-tables by frontline, specialist, secured and unsecured categories are provided in our accompanying DATA REPORT which can be downloaded at www.pfrc.bris.ac.uk

Executive summary: what did we find?

PREVALENCE

- The number of encounters that frontline staff have with customers experiencing a mental capacity limitation or decision-making difficulty may, at first glance, appear modest:
 - in a typical month, during credit applications, staff report encountering four customers with serious problems with understanding, three with communication problems, two with memory problems, and two with problems weighing-up information.
- However, when considered across multiple staff handling credit applications in a single lending organisation, the scale of potential contact begins to emerge:
 - in a typical month, a lender with 100 staff could have 400 encounters with customers with serious difficulties in understanding, which equates to 4,800 annual encounters.
- Importantly, each of these encounters represents an opportunity to provide further support (where needed) to overcome these difficulties.

Prevalence
Page 16

PERCEPTIONS

- In terms of positive responses:
 - 92% of frontline staff reported they had heard of the concept of 'mental capacity'
 - 80% of frontline staff reported they fully understood what 'mental capacity limitations' meant.
- These positive reports, however, need to be balanced against:
 - 54% of frontline staff agreeing 'mental capacity limitations are a form of mental health problem'.
- As CONC, introductory training, and basic resources on mental capacity will all make clear, mental capacity limitations are not the same as mental health problems.
- Understanding this is key, as the support needs of customers with mental capacity limitations, and those with mental health problems (but no mental capacity limitation) are often very different.

Perspectives
Page 19

PRACTICE

- Where frontline staff suspect a customer has a mental capacity limitation, they report that:
 - they allow more time for the application (86%)
 - they make adjustments by offering to provide information in an alternative format (61%)
 - they attempt to understand more by undertaking a basic assessment of the customer's ability to understand, remember, weigh-up, and communicate (50%).
- When staff were asked if their organisation had a policy or procedure covering what they should do if they suspected a customer has a mental capacity limitation, 26% reported that this did not exist.
- While such an organisational policy might have existed that staff simply didn't know about, it is important that such policies both exist and are widely communicated to relevant staff.

Practice
Page 22

What action can lenders take?

Telephony and face-to-face (page 27)

The BRUCE protocol can be used to both identify and help support customers with decision-making limitations:

- **Behaviour and talk** – staff should monitor a customer's behaviour and talk for indications of difficulties with:
 - **Remembering** – is the customer exhibiting any problems with their memory or recall?
 - **Understanding** – does the customer grasp or understand the information given to them?
 - **Communicating** – can the customer share and communicate their thoughts, questions, decisions about what they want to do?
 - **Evaluating** – can the customer 'weigh-up' the different options open to them?

Intermediated credit (page 39)

- Lenders, brokers, and retailers can also use the BRUCE protocol described opposite.
- Techniques also exist – 'set-up, start-up, stay-with' – to move from identifying a decision-making difficulty to starting a conversation about this, which is reported to pose a challenge for some staff.
- Clarity should also be sought on the responsibility that lenders and their agents take for sharing information about customers with decision-making limitations, and the process for doing this.

Online lending (page 44)

- CONC guidance is for all lending channels – including online.
- Some lenders have started to examine what data is already collected about customer actions/steps taken during an online application, and considering what this might tell us about their understanding, recall, weighing-up, and communication.
- Other lenders have considered how support for decision-making limitations might be given in the online channel or outside of this.

Introduction

This guide focuses on credit applications, and how customers in vulnerable situations can be better identified and supported.

Covering telephony, face-to-face, intermediated and online lending, it draws on survey research with 1,524 frontline staff in 18 UK lenders, and discussions with stakeholders.

What is this guide about?

This guide aims to help firms better identify and support customers in vulnerable situations during credit applications.

Our focus: mental capacity limitations

The guide primarily focuses on customers with **mental capacity limitations**:

- these can result in customers having significant problems with understanding, remembering, and evaluating information about the credit product they are applying for, as well as communicating a decision about this
- these problems are usually due to **underlying mental or physical health issues**, medication or treatment side-effects, or substance use which can affect decision-making
- where not identified by lenders, these **can result in detriment** including borrowing and lending that results in 'later downstream' financial difficulty and problem debt.

FCA regulatory guidance¹ and wider UK law²⁻⁴ on mental capacity and entering into a contract exist⁵. This guide therefore describes these frameworks, and explains what action can be taken in light of them.

Our sources: staff and firm experience

The guide draws on the experiences, knowledge, and views of staff and firms on mental capacity limitations (Figure 1). In doing this, it recognises:

- that action is already being taken by staff and firms on this issue
- but it is often challenging for staff to identify and support customers with mental capacity limitations
- and staff will also encounter customers experiencing other difficulties with decision-making (such as language or literacy issues), who firms will want to appropriately support as well.

This guide therefore provides advice that can be used with customers who exhibit mental capacity limitations, or other decision-making difficulties.

Why has it been written?

- To date, much discussion about vulnerability has focused on debt collection practice and policy.
- In our recent *21 steps* guide, we introduced new data and tools for firms to take action (www.pfrc.bris.ac.uk).
- However, vulnerability is about more than debt collection – if we extend our focus to credit applications, firms can:
 - **reduce the potential risk of detriment** – identifying a mental capacity limitation during a credit application, can avoid credit being provided that a customer neither understands, nor repays
 - **offer support** – with reasonable support, many customers experiencing capacity limitations can overcome them, and (if eligible) make an informed decision to take out credit.
- As the data in this guide shows, while good practice on mental capacity does exist, some staff and firms may experience difficulties in putting it into practice.

What is new about it?

- 'Mental capacity' is not a new issue for lenders – however, it is an area where detailed data and insight have been lacking.
- Presenting new evidence on **secured and unsecured lending^A**, the guide shares the experiences of 1,524 frontline staff who take customers – via telephone or face-to-face contact – through lending applications.
- Recognising that credit comes in a variety of forms, the guide presents new data from interviews and group discussions about **intermediated credit**, held with lenders and brokers.
- The guide also draws on previously unpublished work on **online lending** which considers how technological innovation and the identification of potential capacity limitations can both be achieved.

How should the guide be used?

- **Context** – our first section (pages 6-14) introduces vulnerability and mental capacity, and explains the regulatory and legal frameworks underpinning these.
- **Insight** – our second section (pages 15-25) shares new data and insights on lending and customer decision-making limitations.
- **Action** – our third section (pages 26-49) describes what the practical steps and actions lenders (of all types) can take to better identify and support customers with mental capacity and other decision-making limitations.

^A For reasons of space, this guide presents combined findings for both secured and unsecured products. However, full tables are provided in our DATA REPORT at www.pfrc.bris.ac.uk

Figure 1: new data, new insights

1,524
frontline credit
staff completed
our survey

- In total, we ran an online survey with 1,666 staff who took credit applications from customers over the telephone or face-to-face.
- In this guide, we focus on findings from the 1,524 'frontline staff' – working in general credit application handling roles – as these represent the main workforce taking credit applications directly from customers.
- These staff were selected from a representative sample of 18 UK creditor firms who provided unsecured and secured credit.
- Each staff member was asked about their experience and views on working with customers who have difficulties with decision-making, including those with a mental capacity limitation.
- Data from the 142 specialist staff are in our DATA REPORT (www.pfrc.bris.ac.uk) – these staff specialise in third parties, sensitive cases, and/or customers in vulnerable situations, and represent a minority of staff taking credit applications.

- We interviewed 10 lenders about intermediated credit applications, vulnerability, and mental capacity, and held a roundtable with around 30 lenders and brokers about these issues.
- Participants in both discussions were asked about the current challenges and opportunities that were being encountered.
- The qualitative data, and main discussion themes, are reported in the section on intermediated credit (page 39).

**We also spoke
with lenders,
brokers and
retailers about
intermediated
credit...**

**... and we
drew on wider
work focusing
on online credit
applications**

- Given the increasing importance and presence of online lending, we also drew on previously unpublished work undertaken and led by Chris Fitch and the Money Advice Trust.
- This work involved discussions with a range of lenders about the opportunities for identifying and assisting customers with mental capacity limitations (and other decision-making difficulties) during online credit applications.
- The key insights are reported in the section on online lending (page 44), and aim to stimulate further debate and development.

A full description of the study methodology is provided in Appendix 1



CONTEXT

This section defines five core concepts that run throughout this guide:

- identification
- support
- vulnerability
- mental capacity
- and decision-making.

It describes the Financial Conduct Authority's Consumer Credit Sourcebook, and explains the recommendations made to lenders about mental capacity, including their relationship to wider law.

Finally, the section reminds us of the purpose of taking action: to make sure that any customer who experiences a difficulty with decision-making is more readily identified, better understood, and reasonably supported in a positive and commercially-realistic way.

1 'Identify' and 'support': what do we mean?

The words 'identify' and 'support' are used throughout this guide. Despite their common currency, these can mean different things to different people. Consequently, we briefly define their meaning in this guide, along with a number of other key terms.

What do we mean by 'identify'?

In this guide, we use 'identify' to refer to the establishment or recognition of something.

We specifically use the word to describe where an action establishes that a customer has a problem with decision-making. These actions include:

- a staff member physically witnessing such a problem in a face-to-face encounter with a customer in a branch or retail outlet
- a staff member picking-up on a problem while speaking to a customer on the telephone.

Tools to respond to these challenges are provided in this guide on pages 27-43.

Later in this guide, we also use 'identify' to refer to the potential of online lending applications to monitor for, and detect, decision-making difficulties (page 44).

Throughout the guide, we underline the fact that different channels for applying for credit exist, and each will present its own challenges to the identification and support of customers with decision-making difficulties.

What do we mean by 'support'?

In this guide, we use 'support' to refer to assistance or help being given to a customer.

While recognising that support can also mean to 'hold up' or 'bear the weight of', we do not use the term in this way.

Instead, we use it to describe lenders proactively providing reasonable levels of support to customers who merit this^A (while recognising that there will be limits to a lender's expertise, resources and legal responsibility to provide such support).

^A In cases where a customer has a mental capacity limitation due to an underlying disability, lenders should follow the provisions of the Equality Act 2010. Due to space constraints, and also wider lender familiarity with the issue, this guide does not address this legislation in detail. However, where necessary, lenders may wish to consult available guidance on this.

^B The issue of Power of Attorney is familiar to lenders, well documented, and therefore not covered in detail in this guide.

Creditors also make decisions

Throughout the guide, we refer to 'customer decision-making', and we clarify this term in the next section.

However, while this guide refers to lenders supporting customer decision-making, lenders also make decisions.

Most critically of all, lenders will decide whether to provide credit to the customer, or to decline the application.

Based on an assessment of a number of factors – including affordability, as well as the customer's mental capacity to make a decision – the lender will need to draw on a range of information about the customer.

This is all key for three reasons.

Firstly, although a lender may actively support a customer to make decisions during a credit application, this does not automatically mean the customer will be approved for credit.

Secondly, while lenders consider issues of customer vulnerability (including mental capacity), they also have to address a range of other tasks and regulatory responsibilities.

Thirdly, lenders will aim to help customers make informed decisions. However, they are not responsible for making the decision for the customer.

For these reasons, this guide aims to strike a balance between being practically effective and commercially-realistic.

Other terms used in this guide

Other terms employed in this guide include:

- **creditor or lender** – any organisation that (in the context of this guide) provides unsecured or secured credit products
- **customer** – used throughout this guide to simplify discussion, although we recognise that applicants for credit are often not customers, but individual consumers
- **credit 'channel'** – a way through which customers access a credit application or other financial services (e.g. credit can be applied for through channels that include telephony, face-to-face, postal, and online)
- **intermediated credit** – where a customer obtains credit from a lender through a third-party such as a broker, retailer or another lender
- **online lender/lending** – where a customer uses a mobile phone application, or a website to apply for credit (and where there is typically no telephone or face-to-face contact with credit staff)
- **third-party assistance/power of attorney** – where a customer who does not have the mental capacity to make certain types of decision has a third-party to assist in these decisions, or make them for the customer^B.

2 Vulnerability, mental capacity and lending

All lenders should routinely assess how effectively customers with mental capacity limitations are identified and supported across all their products and channels.

Before undertaking such a review, firms need to first understand the relationship between vulnerability, mental capacity and lending.

To assist, this section re-caps five fundamental pieces of knowledge.

Fundamental 1: what is vulnerability?

The Financial Conduct Authority:

- offers a definition in its 2017/18 Business Plan of a 'vulnerable consumer' as "*someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care*"¹
- recognises that vulnerability is never solely about the characteristics or circumstances of the consumer, but also involves the actions of firms, agencies or organisations
- emphasises the fact that everyone is 'potentially susceptible' to detriment ("*people can become vulnerable at any time*"¹), while also requiring lenders to think about individuals who are currently 'vulnerable' or 'particularly vulnerable'².

In other sectors – such as energy and water – similar definitions are also employed^A.

What is detriment?

This is a key element in the above definition, but is often overlooked and left undefined.

Susceptibility to *detriment* – in dictionary terms – means that a customer's situation has exposed them to a greater risk of experiencing harm, loss, or disadvantage.

Importantly, this can include financial harm (such as being more likely to go on and incur additional charges or fees), as well as other forms of loss or disadvantage (such as a customer having their legal rights infringed).

Where staff can understand – through listening and questioning – what forms of detriment a customer might be vulnerable to, this can really help to focus action and response.

How do these definitions work in real-life?

Although definitions work well on the page, in real-life situations, vulnerability is rarely a 'pen and paper' exercise.

In these situations, it is important for lenders to be aware of the three factors that make a customer vulnerable to detriment, and the changing risk or exposure to vulnerability that a customer may have over time. These are considered in Figures 2 and 3.

Fundamental 2: what is mental capacity?

Mental capacity is a person's ability to make a specific decision at a particular point in time. This is determined by whether a person can:

- understand, remember, and 'weigh-up' information relevant to a specific decision
- and then communicate that decision.

Where a customer has difficulty with any of these actions, and this is due to a medical or health reason (see below for a full explanation), this is known as a *mental capacity limitation*.

Why is this important?

If a customer experiences a mental capacity limitation during a credit application (and does not receive support to overcome this), they may take out credit they do not understand, recall taking out, or realise needs repayment.

This can result in default, financial difficulties, and other customer detriment, as well as costs for the lender. For these reasons, the Financial Conduct Authority states that customers with mental capacity limitations may be '*particularly vulnerable*'².

What causes a mental capacity limitation?

Mental capacity limitations are broadly considered to be caused by an underlying mental or physical health issue, medication or treatment side-effects, or drug or alcohol use that affects a person's decision-making. A fuller list of causes is given in Figure 4 (page 12).

^A Other regulators employ similar, but subtly different definitions. OFGEM defines vulnerability as "when a consumer's personal circumstances and characteristics combine with aspects of the market to create situations where they are: significantly less able than a typical consumer to protect or represent his or her interests in the energy market; significantly more likely than a typical consumer to suffer detriment, or that detriment is likely to be more substantial." OFWAT defines vulnerability where "a customer who due to personal characteristics, their overall life situation or due to broader market and economic factors, is not having reasonable opportunity to access and receive an inclusive service which may have a detrimental impact on their health, wellbeing or finances." Meanwhile OFCOM states that "vulnerability is about people's circumstances, which can change over time... They may become isolated if they are unable to keep in touch with family and friends. They may not be able to participate as fully in society as they would wish."

Staff should not automatically assume, however, that a customer has a limitation, simply because they have a condition which could cause one (as incapacity needs to be established, not assumed).

Is it permanent?

A customer's mental capacity – and ability to make decisions – may fluctuate over time (although exceptions will exist).

Staff should therefore avoid assuming that a customer will always lack mental capacity, just because they previously lacked capacity.

Does it affect all decisions?

No – if a customer lacks the capacity to make one decision (e.g. about money), they may be able to make others (e.g. their health).

Staff also need to recognise that customers are allowed to make 'unwise decisions' (see page 35).

How does this work in real-life?

Definitions and examples are clearly helpful.

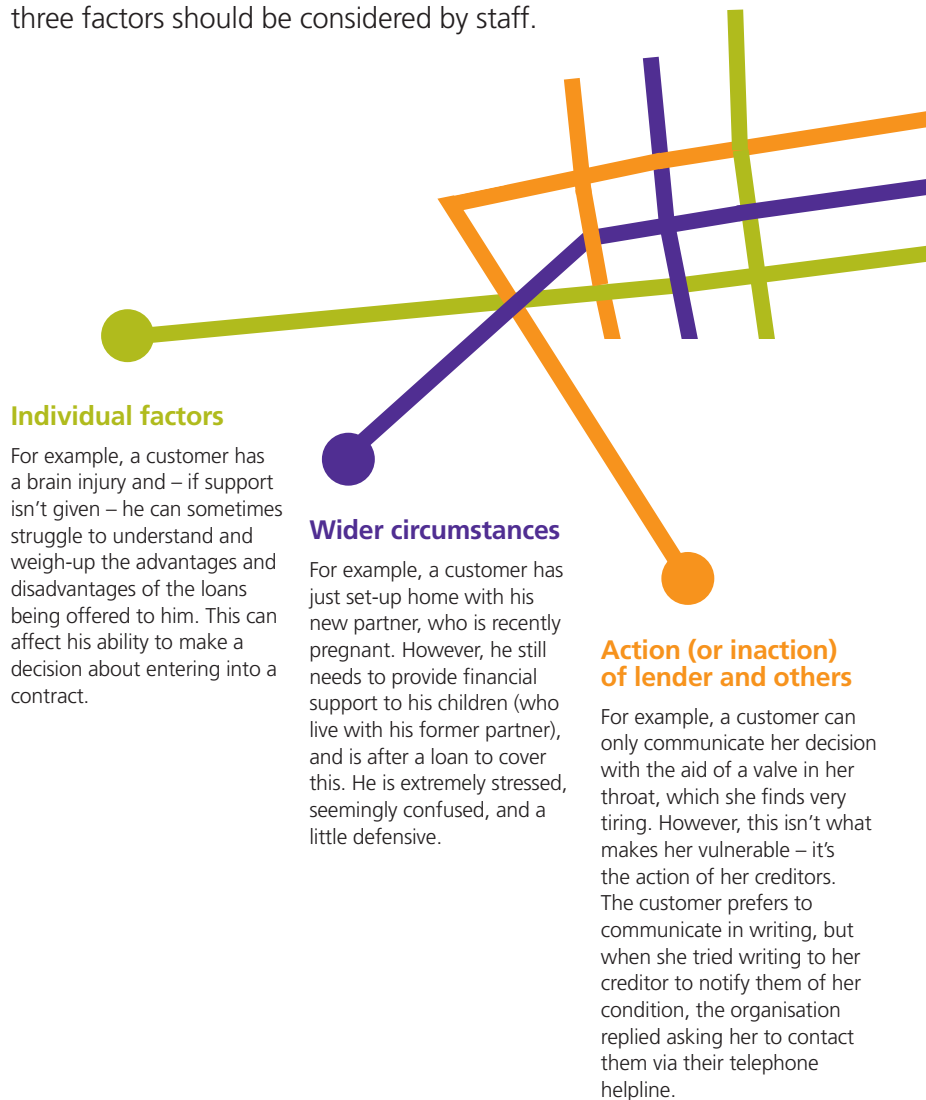
In real-life practice, however, lenders need to avoid falling into common traps.

One of these, is where staff try to 'diagnose' what is causing a potential capacity limitation. This is inappropriate (staff are not clinicians) and inefficient.

Instead, where decision-making difficulties exist, staff should act to understand what assistance would overcome them. This then addresses any immediate difficulty, and can start a conversation which uncovers more of the underlying causes.

Figure 2: what creates a vulnerable situation^B?

To better identify (and support) customers, lenders should know the three factors that can create vulnerability. These are intertwined with one another, and all three factors should be considered by staff.



^B These categories are derived from the FCA's Business Plan 2016/17¹, Occasional Paper No 8³, and Practitioners' Pack⁴

Figure 3: how can vulnerability change over time^{B?}

Over time, customers can move from ‘potentially’ to ‘particularly’ vulnerable. Some will be in a vulnerable situation once, and for only a limited period of time. Many will experience repeated ‘episodes’ of vulnerability (due to illness or common events). While others will have longer-term and more constant needs.



Potentially vulnerable – if a customer is currently able to manage their finances (including being able to make their own decisions), and is not behaving in a way that might harm themselves or others, they are neither vulnerable nor particularly vulnerable to detriment. Instead, they remain potentially vulnerable.



Vulnerable – these are customers who are currently exposed to a risk of harm, loss, or disadvantage. These customers should be identified by their lender, and help and support should be provided to avoid detriment occurring. The lenders aim here is to play their part (within reason) in returning the customer back to the potentially vulnerable category.



Particularly vulnerable – these are customers who are currently at a greatly heightened risk of experiencing detriment compared to the majority of customers in vulnerable situations. This detriment could also be far more serious in terms of its negative impact, and could also be imminent. These customers need to be quickly identified by lenders, and action needs to be swift and effective to avoid significant harm. The FCA CONC regulations identify customers with mental capacity limitations and mental health problems as often being ‘particularly vulnerable’.

Like traffic lights, customers can move over time from green through amber to red status, as well as back from red, through amber, to green.

Fundamental 3: what action is needed?

Starting position

All lenders should work to identify and assist customers who may be vulnerable.

Given that mental capacity limitations can make customers ‘particularly vulnerable’, mental capacity should be no exception.

CONC: a key source

This ‘starting position’ is reflected in the Financial Conduct Authority’s *Consumer Credit Sourcebook* (CONC)^C.

CONC is a key document as it offers regulatory guidance on what actions UK firms can take on mental capacity.

It also cites many of the relevant UK laws on mental capacity, and reflects the detailed work previously undertaken by the Office of Fair Trading on lending and mental capacity.

For these reasons, while not representing the only source of available guidance, we now briefly consider the core actions that CONC recommends to lenders on mental capacity.

CONC: what action is recommended?

While lenders should be familiar with the entire CONC section on mental capacity, seven elements stand out:

A Presume mental capacity (2.10.4G)

In almost its first recommendation, CONC observes that lenders should presume^D all customers have the mental capacity to make a decision about a loan, unless indications exist this may not be the case .

This wider legislation also reminds lenders not to automatically decline applications for credit solely because a customer previously had a mental capacity limitation, or a condition which could cause such a limitation.

B Act on knowledge or suspicion

As noted above, CONC notes that lenders should presume customer capacity.

However, CONC also states that lenders should act on any knowledge (past or present), or an observation, suspicion, or belief that a mental capacity limitation exists.

^C The CONC sourcebook contains regulatory rules on mental capacity (which are binding), and regulatory guidance (which recommends a particular course of action, or a means of compliance, but which is not binding). While collections and debt advice practice on mental capacity are rule-based, activity on credit agreements are guidance-based. The Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB) does make brief reference to customers with mental capacity limitations (recognising them as ‘particularly vulnerable’), but does not provide the level of detail given in CONC, and is not considered further here. Lenders in the mortgage sector may therefore wish to consider the degree to which the guidance given in CONC on mental capacity will be drawn upon to help inform their contact with customers with mental capacity difficulties.

^D The words ‘assume’ and ‘presume’ are often used interchangeably. While they can both mean ‘suppose’, the term ‘assume’ means to suppose without any supporting evidence, while ‘presume’ means to suppose on the basis of probability. In practice, however, the most important issue is that staff from the outset should always suppose, assume, or presume that a customer has the mental capacity to make a decision, unless indications exist or emerge that this may not be the case.

This means that lenders:

- should take action to assess whether a customer can understand, remember, and weigh-up information or explanations, and communicate a decision (2.10.15G)
- should assist and provide reasonable support to help customers to make a decision (2.10.5G)
- should not rely on (or wait for) customers to disclose such limitations
- should not overlook indicators, and should be watchful and vigilant for them (2.10.8G).

Later in this guide, a list of potential indicators and cues is provided (page 27).

C Support follows identification (2.10.12G)

CONC states that where a lender knows about or has identified a capacity limitation, the firm should (where possible) assist the customer to make a borrowing decision, while mitigating any risk to the customer.

This support can include allowing sufficient time for a decision (2.10.17G), providing clear jargon-free information (2.10.14G), and taking other steps to assist the customer.

Where such assistance has been provided, but is not successful, firms can decide not to lend to the customer (2.10.20G). This is not the only basis for declining credit, and factors such as appropriateness and affordability remain key considerations.

D Mental capacity and mental illness differ

CONC (2.10.6G) explains that mental capacity limitations are caused not only by mental illnesses, but also by a range of other factors (including brain injury, learning disabilities, or confusion resulting from medical treatment).

E Procedures and protocols (2.10.10)

CONC states that firms should have policies, procedures and protocols in place to fairly manage credit applications from customers with mental capacity limitations.

CONC also includes a rule that lenders should have similar policies and practices in place in relation to arrears and collections (7.2.1R).

F This part of CONC applies to all channels

As we discuss in detail on page 44, CONC does not refer to any channel – including online lending – being excluded from its guidance on mental capacity.

This means that its recommendations apply not only to face-to-face or telephony credit applications, but also to the growing realm of the online lending market.

G Unwise decisions (2.10.13)

Referring to the Code of Practice for the Mental Capacity Act (2005)⁵, CONC notes that while customers are allowed to make unwise decisions (e.g. how they might spend a loan), this needs to be balanced against their right to safety and protection when they are unable to make decisions for themselves.

CONC: guidance or rules?

The CONC sourcebook contains regulatory guidance on mental capacity^c – this sets out options and recommended courses of action, and means of compliance, but is non-binding.

However, if lenders do not consider such guidance, they risk failing to pay due regard to a customer's interests or to treat them fairly (FCA Principle 6), and could fail to meet a client's information needs (FCA Principle 7).

Furthermore, while the CONC sourcebook represents guidance on mental capacity and not rules, firms deviating from it might be expected to be able to provide good reasons on why they took this action.

Consequently, lenders will typically pay due attention to this non-binding guidance from the regulator.

Fundamental 4: what about the law?

An array of law relating to mental capacity exists in the UK.

This prompts the question – what do lenders need to know (and do) about this law?

Acts of legislative bodies

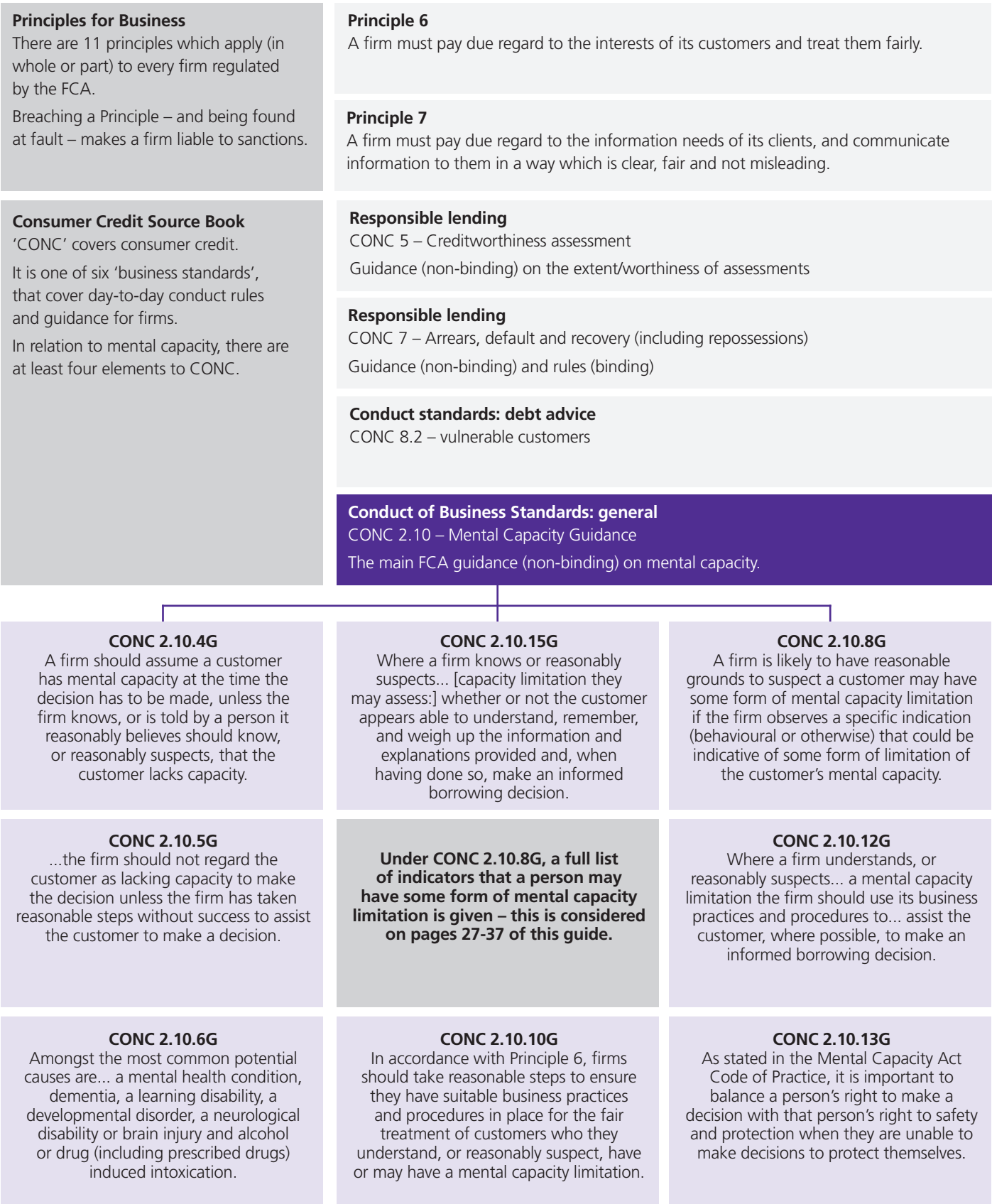
Across the four UK countries, there are three distinct 'mental capacity acts' (for acting and making decisions about individuals who lack capacity)⁷⁻⁹, as well as detailed accompanying 'codes of practice'^{5,10}.

These Acts do not primarily relate to lending, financial services, or banking, and instead provide definitions of mental capacity, as well as statutory tests for assessing capacity (which are reflected in this guide, and also the CONC framework).

They also outline how a person's financial and health affairs should be managed if that person lacks the capacity to make a particular decision at a specific point in time (including relevant power of attorney arrangements).

Two of these Acts (England and Wales, and Scotland) are referenced within CONC, and were also reviewed as part of the historical development of materials from the Office of Fair Trading that CONC directly draws on¹¹.

Figure 4: FCA 'roadmap' – Principles for Business (PRIN)⁶, and Consumer Credit Source Book (CONC)²



However, apart from touching on elements of contracting and mental capacity in relation to payment for ‘necessaries’ (goods that are basic requirements for living¹²), the Acts are more focused on non-contractual considerations.

Common law

There are also at least five common law tests of capacity that have been produced following judgments in court cases^E, including one for establishing capacity to contract.

In England and Wales, common law states that where a party to a contract lacks capacity to enter into such a contract, the contract may be voidable if it can be shown that the creditor knew, or should reasonably have known, that the borrower lacked the capacity to enter into the contract at the time that they did so¹¹.

Meanwhile, in Scotland, if on the balance of probabilities it can be shown that the borrower lacked the capacity to contract, then the effect is that the contract is void¹¹.

CONC: a single source

Given the array of acts and common law, lenders are fortunate that a single source of guidance does exist: the CONC framework.

CONC applies across all four UK countries, reflects wider common law on mental capacity, and most importantly translates this into practical guidance for a lending context.

While lenders will always need to keep abreast of wider legislation, CONC currently provides a useful and single source for lenders on mental capacity.

Fundamental 5: everyday decision-making

Our final point is the most fundamental: all lenders need to bear in mind the importance of action on supporting ‘*everyday decision-making*’.

The reason for this is that it is easy to become ‘lost’ in regulation, and to overlook a basic aim: to treat the customer fairly.

Consequently, the simplest approach is to make sure that *any* customer who experiences a difficulty with decision-making is more readily identified and reasonably supported wherever possible.

Benefits

Lenders who take this step will ensure higher levels of regard to the FCA guidance on mental capacity, and positive outcomes for affected customers.

Furthermore, they will also be able to help customers who *don’t* have a mental capacity limitation, but who (for other reasons) do have serious difficulties with understanding, memory, weighing-up, or communication.

Tools

For this reason, all the tools and advice in this guide – including our BRUCE protocol (see page 27) – have been developed to support all customers with *everyday decision-making* – regardless of the root cause of any difficulty, or the nature of the decision being taken.

A live problem

As Figure 5 shows, a significant number of customers are *potentially at risk* of either experiencing a mental capacity limitation, or some other decision-making difficulty.

Furthermore, as shown by the survey data in the ‘Prevalence’ section of this report (page 16), across an entire lending operation, frontline staff report potential contact with large numbers of customers already exhibiting such difficulties.

Consequently, while maintaining a clear head on the scale of the challenge, there is still a practical need and regulatory recommendation for lenders to take action on decision-making limitations – this guide represents a contribution to this, but more importantly provides the basis for further lender action.

^E There are at least five common law tests of capacity, of which one covers a person’s capacity to contract (the others covering wills, gifts, litigation, and marriage)¹⁴.



Figure 5: customers at potential risk of experiencing a mental capacity limitation, or other forms of decision-making limitation

Focus on mental health and decision-making

The Money and Mental Health Policy Institute undertook an online survey of nearly 5,500 people with experience of mental health problems¹⁴.

Asked about their perception of the *effect of their mental health problems* on their ability to make a decision during any loan application in the last 12 months, findings from the just over 3,000 participants were:

- **one-in-four** reported being unable to understand the terms and conditions of the loan (24%)
- nearly **four-in-ten** reported being unable to remember what they had been told about the loan (38%)
- nearly **one-in-two** reported being unable to weigh-up the advantages/disadvantages of the loan (48%)
- over **one-third** said they were unable to communicate their decision, ask questions, or discuss the loan with the lender.

Mental health
Although prevalence rates vary across the four UK countries, mental health problems are commonly experienced in the UK¹³. We also have data on mental health and decision-making (see opposite).

Learning disability

In the UK, around 1.5m people have a learning disability¹⁵. Learning disabilities affect the way a person understands information and how they communicate.

Dementia

In the UK, 1-in-14 people over 65 are living with dementia¹⁶. Dementia is not a disease itself, but is the name given to the damage done to our brains by a range of diseases (including Alzheimer's).

Developmental disorders

These are conditions that are present from childhood and which may seriously impact on language, learning, physical coordination, interaction.

Treatment and medication effects

The effects of medical treatment, or the side-effects of medication, can impair a customer's decision-making.

Brain injury

Around one million people visit A&E each year for head injuries. The majority will have no lasting effects, but others will be left with a traumatic brain injury. This can affect a person's cognitive, physical, sensory, and behavioural skills¹⁷.

Substance misuse

In England, around three in every 100 adults have a drug dependency, and around three in every 100 have an alcohol dependency¹⁸. If a customer is intoxicated with alcohol, prescription medication, or illegal drugs their decision-making may be impaired.

Other decision-making limitations

In the UK, almost one million people cannot speak English 'well' or 'at all'¹⁹. Language, literacy and numeracy can all affect decision-making.



INSIGHT

This section presents data from our survey research with 1,524 frontline staff in 18 UK lenders.

The first part considers prevalence – reporting on the number of encounters that staff have with customers with decision-making or mental capacity limitations. [See page 16.](#)

The second part examines perspectives – reflecting on how staff perceive and understand these limitations and encounters. [See page 19.](#)

The third part focuses on practice – drawing on the actions that staff report taking when they suspect a customer has a decision-making limitation. [See page 22.](#)

3 Prevalence: how often do staff encounter customers with decision-making difficulties?

The simplest questions are often the most difficult to answer.

“How many customers experience serious decision-making difficulties during credit applications?” is no exception to this.

This section therefore draws on data from 1,524 frontline staff to address both this question, and its implications for practice.

What did our survey focus on?

Encounters with customers experiencing serious difficulties with decision-making are not a new issue for lenders or credit staff.

However, until our survey, no systematic data have been available on the:

- **prevalence** or frequency of such encounters
- **perceptions** of staff towards such difficulties
- **practice** and response of staff.

This lack of data makes it difficult for lenders to consider either the scale of the challenge, or the current staff view and response to this.

What did our survey measure?

We surveyed staff about two issues^A:

Firstly, the survey asked staff about the number of encounters with customers experiencing difficulties with each of the four core elements of decision-making:

- **understanding, remembering, weighing-up** relevant information about the product
- **and communicating** a decision about whether to enter into the credit agreement.

Secondly, the survey asked staff about the number of encounters with customers they believed had a mental capacity limitation.

Why did we do this?

The rationale for taking two measures of prevalence is entirely practical: while it may be clear to staff that a customer is having decision-making difficulties, the reasons for these difficulties may not always be known.

Staff may therefore not know – in either the short or long-term – whether a customer has a mental capacity limitation, or has a difficulty related, for example, to literacy or numeracy.

Some staff will find out the cause of these problems while talking with the customer. However, others will not – with staff having to respond to the difficulties as best they can.

Consequently, we distinguish between staff encounters with customers believed to have a mental capacity limitation, and staff encounters with customers having difficulty with understanding, remembering, weighing-up, or communication.

1 General decision-making difficulties

What were staff asked?

Our survey asked frontline staff to focus on encounters with customers who had *serious difficulties*^B with understanding, memory, weighing-up, and communication.

Staff were asked about each type of difficulty, and were asked how many customers with the difficulty were encountered in a typical month.

They were asked to include any customer who had such a difficulty. This meant their answers could include disclosures of a difficulty, as well as known or identified difficulties.

What did staff report?

In a typical month, a member of frontline staff will deal, on average, with a median of 238 customers and 22 third-parties during applications.

From these, staff report encountering customers with decision-making difficulties, including:

- **two customers** who in a typical month have serious problems with remembering or recalling information (e.g. about the credit product applied for, or in recalling required personal details)
- **four customers** who have serious problems in understanding (e.g. either about the credit product, or how to complete the credit application)

^A All survey questions and full data-sets are provided in our DATA REPORT at www.pfrc.bris.ac.uk

^B For each aspect of decision-making, staff were asked not to think about minor or technical difficulties that a customer might experience when making their application for credit, and were asked to focus instead on how an individual's situation or characteristics may make the application process harder for them. Examples were also given for each aspect of decision-making to illustrate the types of difficulties that customers may experience. Again, further information on the survey questions and full data-sets are provided in our DATA REPORT.

Figure 6: estimated number of encounters each year with customers experiencing serious difficulties in understanding information

In a single year, the estimated number of times frontline staff handling credit applications could encounter a customer with a serious difficulty with understanding:

48 times	for a single member of frontline staff
2,400 times	in an organisation with 50 credit staff
4,800 times	in an organisation with 100 credit staff
12,000 times	in an organisation with 250 credit staff
24,000 times	in an organisation with 500 credit staff
48,000 times	in an organisation with 1,000 credit staff

- **three customers** who have serious problems with communication (e.g. either in communicating a decision, or making themselves understood to the staff member)
- **two customers** who have serious problems in 'weighing-up' information (e.g. in making a choice between the options open to them a decision, or comparing different options)

These data cannot be used to provide a total count of 'decision-making difficulty' (as those with multiple problems would be counted more than once). They also combine data on unsecured and secured products.

However, the data do provide an insight into how often staff report encountering specific problems in a typical month, and the different needs for support that customers present.

Interestingly, when asked to think about customers with decision-making limitations, frontline staff indicated that at least a third of these customers *did not* proactively disclose a difficulty with understanding, remembering, weighing-up, or communication to them (see our DATA REPORT for more detail). Again, this underlines the importance of staff taking reasonable steps to monitor for, and identify, customers who have difficulties with such aspects of decision-making.

What might this mean for an entire firm?

The data above relate to individual staff – what might this look like? Figure 6 'scales up' the above data across an entire firm.

Using data on reported encounters with customers with difficulties in understanding, it provides estimates for different sized operations over the course of an entire year.

While this does not provide a count of individual customers (as a customer can apply multiple times for credit to different staff), it does provide an approximate indication of the number of 'customer encounters'.

Consequently, in a large organisation with 1,000 credit staff, over the course of a year, there may be up to 48,000 of these opportunities for staff to take action to support the customer.

What are the practical implications of this?

Whatever the underlying cause – be it a mental capacity limitation, or another factor – these data indicate that credit staff will routinely encounter customers who have serious difficulties with decision-making.

Importantly, each encounter provides a potential opportunity to engage with, and offer reasonable support to, the customer to overcome these difficulties where possible.

Later in this report, we provide guidance on the steps staff can take to enable more customers to do this, and to ultimately make sure an informed decision is taken on entering into a credit agreement.

Notes: these figures are (a) based on a median average of the number of customers encountered in a typical month who exhibit difficulties with understanding during a credit application as reported by frontline staff and are (b) used to broadly estimate the number of encounters across different sized lenders in a single year. The data indicate potential encounters with customers, rather than customer numbers (as a customer could apply multiple times for credit with a single organisation).

Figure 7: estimated number of encounters with customers experiencing a mental capacity imitation each year

In a single year, the estimated number of times frontline staff handling credit applications might encounter a customer with a mental capacity limitation:

24 times	for a single member of frontline staff
1,200 times	in an organisation with 50 credit staff
2,400 times	in an organisation with 100 credit staff
6,000 times	in an organisation with 250 credit staff
12,000 times	in an organisation with 500 credit staff
24,000 times	in an organisation with 1,000 credit staff

2 Mental capacity limitations

What were staff asked?

Staff were specifically asked about the number of customers encountered in a typical month who they suspected had a mental capacity limitation. They were asked to include any customer who had such a limitation – therefore including where a customer proactively disclosed this, where staff found out while speaking with the customer, or where staff already knew.

What did staff report?

Staff reported that in a typical month, they encountered an average of **two customers** with a mental capacity limitation.

What might this mean for an entire firm?

Figure 7 employs the same approach and caveats as the previous ‘scale-up’ calculation. This shows that based on the above data, and if calculated for an entire year, different sized lenders could have 1,200 to 24,000 encounters with customers with potential mental capacity limitations.

The challenges of capacity

The above data aim to better inform debate around mental capacity and lending. However, the collection and interpretation of these data also raise their own talking points.

Notes: these figures are (a) based on a median average of the number of customers encountered in a typical month who are reported by frontline staff to have a mental capacity limitation and are (b) used to broadly estimate the number of encounters across different sized lenders in a single year. The data indicate potential encounters with customers, rather than customer numbers (as a customer could apply multiple times for credit with a single organisation).

Firstly, the data are based on staff reporting their *known* encounters with customers with mental capacity limitations – clearly other customers with capacity limitations may not have disclosed this, or were not identified.

This indicates the ever-present need to help staff to identify, engage, and understand the needs of such customers.

Secondly, staff may have reported customers thought to have mental capacity limitations, but who may not have had such a problem.

This includes customers with different forms of decision-making difficulty (but who did not have an impairment of their mental faculties at the time of the credit application).

Thirdly, some staff may not understand the difference between ‘mental capacity’ and ‘mental health’ – as shown later in this guide, more than 50% of frontline staff may be confusing ‘mental incapacity’ and ‘mental health problems’.

This is important to address – and not because it affects our prevalence estimates.

Staff need to have a sound understanding of mental capacity – with CONC being clear on the difference between mental capacity and mental health. Such an understanding is key, as the support needs of those customers with mental capacity limitations, and those customers with mental health problems (but no mental capacity limitation) are often very different, and care needs to be taken.

4 Perspectives: what do staff know and think about mental capacity limitations?

While it is important to consider ‘how often’ staff encounter decision-making limitations, it is also useful to ask ‘how do’ staff perceive and understand these encounters and difficulties?

In this section, we draw on quantitative and qualitative data from the research to consider staff perspectives, knowledge, and understandings further.

What did our research focus on?

There is no doubt that ‘mental capacity’ can be tricky to understand, even harder to explain to others, and more than a little resistant to practical implementation.

At first, it can appear disarmingly simple (‘the ability to make a decision’), only to become almost immediately complex (‘due to a range of factors that impair mental faculties’), before often descending into debates about regulation and practice.

However, if lenders start at the right place (with the FCA’s CONC framework), then staff can not only grasp the meaning of capacity and decision-making limitations, but will be able to practically use this to help customers.

Consequently, it is critical that lenders check not only that staff have received training or instruction on mental capacity, but that they have *understood* this.

Our survey therefore considered staff understanding and perspectives – starting with the meaning of mental capacity, before examining the perceived causes of decision-making limitations.

1 What does ‘mental capacity’ mean?

Our survey asked frontline staff to read a series of statements, and to indicate whether they agreed, disagreed, or neither agreed or disagreed with each statement in turn^A.

The survey found that while a large number of staff reported an understanding of ‘mental capacity’, that this may not hold in practice.

Self-reported understanding: high levels

The survey found that many frontline staff reported a familiarity with, and understanding of, the concept of mental capacity:

- 92% reported that before completing the survey they had heard of the concept of ‘mental capacity’
- 80% said that before completing the survey they fully understood what ‘mental capacity limitations’ meant.

On the face of it, these findings are promising, and possibly would even be encouraging if they were part of a post-training evaluation.

Understanding key concepts: lower levels

However, these promising findings have to be balanced against:

- 54% of frontline staff agreeing that ‘mental capacity limitations are a form of mental health problem’
- 8% agreeing that ‘if we know a person has previously had a mental capacity limitation, we should not offer them credit’.

These results raise a number of issues.

First finding: mental capacity

In relation to **the first finding**, the majority of training, explanatory leaflets, and the CONC guidance itself, will clearly state that mental capacity limitations **are not the same** as mental health problems.

Instead capacity limitations can be caused by a wider range of different factors, including mental health conditions, but also spanning concussion, alcohol use, learning disabilities, and the side effects of medication/treatment.

Consequently, given the difference between ‘mental capacity’ and ‘mental health’ represents ‘basic knowledge’, action is needed to ensure staff do not confuse these two different states.

As noted, such an understanding is key, as the support needs of those customers with mental capacity limitations, and those customers with mental health problems (but no mental capacity limitation) are often very different, and care needs to be taken on this.

^A For this section, we combined ‘strongly agreed’ and ‘agreed’ into a single ‘agreed’ category, and also took the same approach for ‘strongly disagreed’ and ‘disagreed’.

Second finding: eligibility for credit

In relation to the second finding, introductory training and instruction on capacity (reflecting CONC) should again have explained that this perspective is unworkable and potentially unfair.

This is because even where a previous history of mental capacity exists, CONC recommends that incapacity should not be definitively concluded until reasonable steps have been taken (without success) to assist the customer in making the decision in question.

However, this result should not be used to conclude that almost one-in-ten staff are declining credit applications from people with a previous history of capacity limitation^B.

Indeed, these staff could be expressing a personal opinion on how credit application decisions should be made in general, which has no bearing on the policy followed within their organisation.

However, what these findings do reflect is a difficulty with the understandings that some staff hold about mental capacity limitations.

2. Causes of decision-making difficulties

Our survey asked frontline staff to identify what they perceived the causes of customer decision-making difficulties to be.

Given constraints on the length of the survey, we asked staff to think about this in relation to one key domain: *understanding*.

What did staff report?

Among frontline staff, the most commonly identified causes of understanding difficulties during credit applications were:

- difficulties in speaking English (44%)
- being elderly (35%)
- hearing impairments (10%)
- being upset or emotional (9%)
- mental health problems (6%)
- mental capacity limitation (5%)
- difficulties reading or writing (5%)
- learning disabilities (3%)

In addition, 7% of frontline staff reported that the design of the credit application process – a potentially organisational rather than a customer issue – was ‘always’ or ‘often’ the cause.

Most common, or just most obvious?

What is noticeable from these data is that staff more frequently identified causes of difficulty that were arguably more visible or obvious (such as English language problems).

In contrast, arguably less explicit or visible reasons – such as hearing impairment, or learning disabilities – were reported less often.

Clearly, this could just reflect the underlying cause of difficulty that was being encountered – and this would seem likely for customers with limited English language skills.

However, there is another explanation – in some cases, staff may be assigning a difficulty with understanding to a more visible or explicit characteristic (such as language issues), rather than picking-up on the actual (but less visible) underlying cause.

Consequently, it is important that credit staff consider all the possible causes of a decision-making limitation – and not only those that are immediately visible, or seem immediately obvious, to the staff member.

Doing this will help a customer’s range of needs to be identified, and potentially met.

^B Lenders can decline an application for credit on numerous grounds, including (but not limited to) mental incapacity.

Box 1: frontline staff views on causes of decision-making difficulties

Language barriers

"The main issue I deal with is language barriers and this can be extremely difficult to deal with or assess over the phone. If a customer can barely understand basic security questions how can we be sure they understand a credit agreement in a foreign language?"

Age

"Mainly work with... customers who are in an older age range. Difficulties tend to become more pronounced the older the borrower becomes."

Hearing

"Understand there are variations of hearing loss. A person may use a hearing aid to amplify sounds to improve their hearing or it may just be that they have difficulty hearing faint or distant noises."

Emotion

"Often customers are emotional and distressed with financial problems, it's sometimes difficult to know how to help if you can't. Where can these people go to? This is more of an issue than mental capacity within my role and happens often."

Mental health problem

"...mental health is becoming more and more of an issue, we are beginning to see more customers coming into branch with these difficulties that want to transact on their account and our staff are finding it hard to pin point what exactly we can and cannot do with a customer who lacks the capacity to remember what they did earlier that day."

Mental capacity limitations

"The question we have to ask around mental capacity is not easy to understand or identify problems and it is down to personal judgement whether to proceed."

Financial literacy

"A lot of customers in my experience have a very low level of financial literacy. They do not understand ID checking for instance and why we do this."

Learning disabilities

"I have never worked with a customer with a learning disability so I feel I need more help and training to know what to do in the situation."

5 Practice and policy: what actions are staff taking on mental capacity?

We have established that customers with mental capacity limitations are encountered by lenders on a regular basis.

We have also considered staff understanding of mental capacity, and highlighted misunderstandings that may need attention.

We now turn to staff action – and in particular, the steps staff report taking when they suspect a customer has a capacity limitation.

What did our survey focus on?

With practice in mind, our survey focused on:

- **staff monitoring** for potential mental capacity limitations among customers
- **staff responses** to a suspected mental capacity issue
- **staff awareness** of organisational policy on mental capacity.

1 Staff monitoring for capacity limitations

What were staff asked?

Our survey asked frontline staff if they took action to look for indicators, cues, or signs of potential mental capacity limitations among customers. Two key findings emerged.

Firstly, the majority of frontline staff recognised the importance of proactively looking for mental capacity limitations.

Seventy-one percent of these staff, for example, reported that they routinely monitored and looked for such limitations.

This is positive, as it reflects the broader importance of not relying on disclosure when it comes to vulnerability, but proactively working to identify such situations instead.

When combined with 95% of surveyed frontline staff reporting that it is important for creditors to consider a customer's mental capacity when offering credit, this appears to reflect a positive staff outlook towards tackling potential capacity limitations.

Secondly, while recognising the importance of identifying such limitations, staff appear to be realistic about the challenge this involves.

Nine percent of the frontline staff surveyed, reported that it was easy to identify customers with mental capacity limitations, while 68% disagreed with this.

Taken together the findings reflect a positive but pragmatic approach to identifying customers with mental capacity limitations, and a solid foundation on which to build training and skills development.

2 Staff responses to suspected limitations

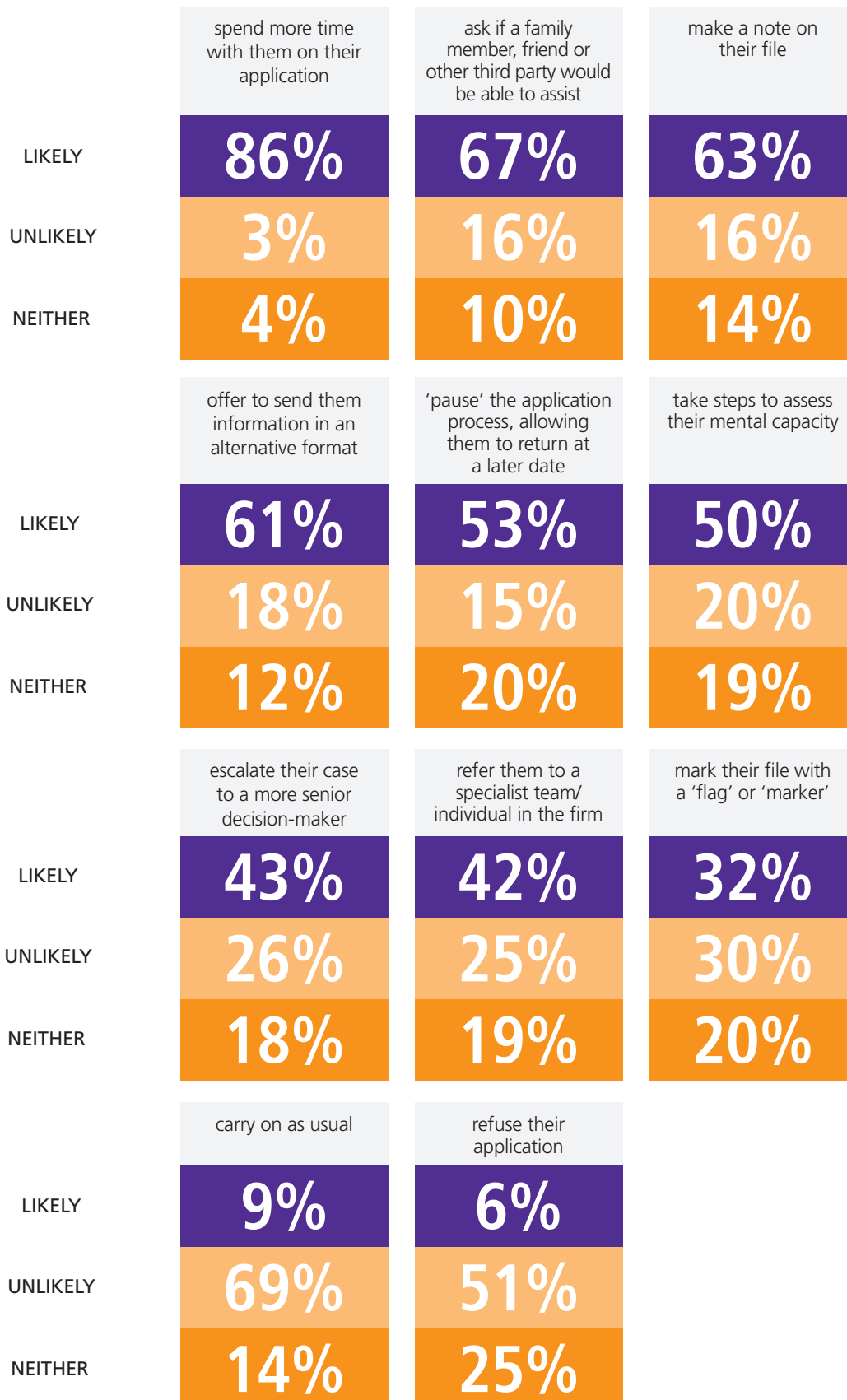
In Figure 8, we present the response of frontline staff to the survey question: *if you suspect that a customer may have a mental capacity limitation, how likely are you to take each of the following actions?*

Among these findings, there are a number of indicators of positive practice:

- **Time – 86% of frontline staff** would respond to a mental capacity limitation by allowing more time for the application to take place. This is a simple but effective strategy, as it allows the application to proceed at a pace set by the customer, and more time for problems with understanding, memory, or other factors to be overcome.
- Taking this step, however, either requires any average handling times in operation to be relaxed, or the customer to be 'taken out' of normal operations and dealt with separately. Consequently, other options can be considered, like the **53% of frontline staff** who reported they would 'pause' the application (allowing a customer to regain capacity) and resume at a later point.
- **Adjustments – 61% of frontline staff** report that they would respond by offering information about the credit product in an alternative format (such as letter or email), which recognises the importance of providing a range of different support options to allow customers to make an informed decision.
- **Assessment of capacity – 50% of frontline staff** would respond to a potential issue by making a basic assessment of the four aspects of decision making (understanding, memory, weighing-up, communication).

It is notable that 20% of staff reported it was unlikely they would take this step (with a further 11% indicating taking this action was not open to them, or did not apply).

Figure 8: frontline staff reports on what action would be taken if they suspected a customer had a mental capacity limitation and other issues



Lenders may therefore wish to consider how a large proportion of staff can be helped to 'take stock' of a customer's decision-making difficulties – later in this guide, we introduce the BRUCE protocol to help firms and staff achieve this (see page 27).

In terms of other elements of practice, **9% of frontline staff** said they would 'carry on as usual' (potentially indicating that the difficulties would be overlooked or deemed irrelevant, or action would be taken at a later point).

Meanwhile, **6% of frontline staff** said they would be likely to refuse the application (which if an attempt to provide reasonable support had been made, but without success, could be an appropriate course of action to take).

3 Staff awareness

What were staff asked?

Our survey asked frontline staff about their organisation's policy on mental capacity, the availability of specialist support, and the provision of training on mental capacity.

Presence of policy

The survey found that **26% of staff** reported that their organisation did not have a policy or procedure which covered what they should do if they suspected a customer might have a mental capacity limitation.

Furthermore, our research found that in **nine of the 18 firms** participating in the study, there was considerable staff disagreement *within each firm* about whether an organisational policy on mental capacity existed.

Here, 'considerable disagreement' was defined as where 25% or more of staff answered 'no' or 'not sure' to a policy existing, while the remainder of staff replied 'yes'.

These two findings can be considered in a number of ways. On the one hand, they clearly reflect the perspective of staff, and it may be the case that organisational policies on mental capacity did exist in their firms, and staff were simply not aware of this. On the other hand, however, it could be that such policies were absent, or simply were not communicated to staff.

For these reasons, all firms ensure need to ensure that policies on mental capacity are both present and communicated.

Content of policy

The survey included an open question where those staff who indicated they worked in an organisation with a mental capacity policy, were asked to summarise what the policy told them to do when a limitation was suspected.

Interestingly, among the responses, were references to directly asking customers about their mental capacity – often referred to by staff as asking 'the mental capacity question'.

Such a question represents both a promising but also potentially challenging development. We therefore reflect on this, alongside other qualitative responses, in Box 2.

Availability of specialist support

Specialist staff or teams (where available) can provide frontline staff with support, advice, and guidance on working with customers with mental capacity limitations.

This can be invaluable, but only if frontline staff are aware of the team, and how they can gain access to its support and advice.

Looking at each of the lenders participating in our survey, it was found that **staff in 16 of the 18 individual firms** often disagreed about whether such specialist teams or staff existed (with disagreement defined as where 25% or more of staff answered 'no' or 'not sure' to whether a specialist team existed, while the remainder of staff replied 'yes').

This is a higher level of disagreement than found in our debt collection study, where such considerable disagreement was only found in five of the 27 participating firms^A.

One reason for this may be that – in historic terms – specialist vulnerability teams in some organisations have grown out of a larger debt collection function. Consequently, higher levels of awareness and referral pathways exist among staff.

Lenders need to address this overall issue, as the provision of specialist support to customers should be based on need, rather than whether a staff member is aware that a specialist support team actually exists.

Provision of training

Finally, the survey found that **26% of frontline staff** reported that they had not received sufficient training on dealing with customers who may have mental capacity limitations.

^A In our 'sister guide' on debt collection – www.pfrc.bris.ac.uk – we present findings on the experience and views of nearly 1600 staff in debt collection on working with customers in vulnerable situations. These staff were asked the same question about their knowledge of the presence or absence of a team providing specialist support on vulnerability.

Box 2: Qualitative responses from frontline staff

The 'mental capacity question'

Staff in our survey – from different firms – repeatedly made reference to asking the 'mental capacity question' during an application:

"We always ask the mental capacity question without exception at the start of every interview"

"We have a mental capacity question and if advised yes has issue we then add notes"

"We always ask the mental capacity question, help them all we can"

While we do not have the exact wording of these 'mental capacity questions', they appear to involve staff asking a customer (during an application) whether they have any need for support in completing the application:

"We have a mental capacity question which we must read out before we complete any application, this gives our customer the chance to tell us if they need any extra assistance or whether they will be unable to go through the application. This is probably one of the most crucial parts of our service"

"In our interview we have mandatory "mental capacity question" if a customer confirm they have problem there is a follow-on question whether they want to proceed. In that case most of our staff will terminate the interview and ask them to come with another person who can support them"

"There is a standard question which has to be answered by every customer regarding their mental capacity if they state they do not have full mental capacity then this is recorded and depending on my assessment of the customer in conjunction with my Manager the interview may be terminated and the customer asked to bring someone able to act for them to a subsequent meeting"

Generally, this is a welcome development – it allows customers to flag any support needs from the outset of an application. However, specifically in terms of mental capacity, it may inadvertently imply that capacity can be checked for (and dealt with) in a single question.

Given that a customer may not be aware that they have a mental capacity limitation, or may not wish to disclose this (due to a belief that it would lead to a declined application), it is important that staff know that they need to be vigilant for signs of decision-making difficulty throughout the application.

Consequently, staff need to be aware of the indicators of a capacity limitation that a customer might exhibit at any part in the application, and be able to respond to these. In practice, this means that the use of a solitary screening question (which should be re-titled as a 'needs question', as it is broader than capacity), should always be combined with a tool such as BRUCE to help identify and support customers with decision-making limitations throughout an application.

Other qualitative issues

Declining credit

"If a customer has a condition or [is] unable to fully understand the information being given, then this product should not be sold to them. All efforts should be made to treat the customer fairly, and allow them to make an informed decision. Where they may have difficulties, efforts should be made to present the information in a way that is understandable to the customer - such as having a relative accompany them into the branch or setting up a power of attorney to act on their behalf."

Looking for indicators

"To be alert when speaking to customers and to be on the look out for any type of indicators that may tip us off of a customer being vulnerable. We are taught to probe where necessary and make the customer feel comfortable at all times."

An emphasis on support

We must empathise not sympathise. Full consent must be taken from the customer if we are to note an account, otherwise we will not do so. We have various methods of providing customer additional support with the management of their account, should the need arise. Large print statements, Audio statements etc."



ACTION

This section provides tools and guidance on identifying and supporting customers with decision-making limitations in different credit application settings.

The first part introduces the BRUCE protocol – this is a tool for staff who handle credit applications either over the telephone, or face-to-face, with a customer. [See page 27.](#)

The second part examines intermediated credit – this is where a customer obtains credit from a lender through a third-party broker, or retailer. [See page 39.](#)

The third part considers online lending – this focuses on the rationale and methods available to online lenders to identify decision-making limitations. [See page 44.](#)

The final part highlights other useful tools for lenders – these are described in our guide on debt collection, but can equally be applied to credit settings. [See page 49.](#)

6 BRUCE: identifying and supporting customers with decision-making limitations

All lenders should take steps to identify and assist customers experiencing a decision-making limitation.

This can help reduce the risk of detriment, and ensure due regard to legislation.

To help staff do this, this section describes the BRUCE protocol.

Introduction

The central aim of this guide is to help staff identify and support customers with decision-making difficulties during credit applications.

This includes customers experiencing mental capacity limitations, as well as other forms of decision-making limitations.

To do this, we introduce the **BRUCE** protocol.

BRUCE: key aspects of decision-making

BRUCE has been designed to remind staff of the key aspects of decision-making.

Developed for use by any member of staff who has either telephone or face-to-face contact with customers, it covers:

Behaviour and talk – staff should monitor a customer’s behaviour and talk for indications of difficulties with:

Remembering – is the customer exhibiting any problems with their memory or recall?

Understanding – does the customer grasp or understand the information given to them?

Communicating – can the customer share and communicate their thoughts, questions, decisions about what they want to do?

Evaluating – can the customer ‘weigh-up’ the different options open to them?

BRUCE: identify and support

When working with customers, staff can keep the BRUCE protocol (and each of its letters) in mind to help identify and spot those customers with decision-making difficulties.

Where BRUCE does help to identify a customer with a decision-making limitation, then appropriate support can be given to the customer to overcome this, and make a decision.

Importantly, BRUCE does not provide a sequence of steps to follow in order, but simply a means of reminding staff about the each of the key issues to address.

BRUCE and the CONC framework

The BRUCE protocol has been developed to help firms address the FCA’s CONC guidance on mental capacity limitations and credit.

In particular, it takes the FCA’s list of potential indicators of a mental capacity or wider decision-making limitation, and develops them into a detailed guide to identification and support.

BRUCE has also been developed with other guiding principles in mind, including the core principles underpinning the Mental Capacity Act (2005)^A.

Finally... introducing ‘Robert’

To help illustrate BRUCE, throughout this section we will draw upon the example of a customer (‘Robert’ – see next page).

Following Robert over time, this section demonstrates how staff can draw on a tool like BRUCE to identify and support Robert, and customers like him.

^A The five guiding principles of this Act for England and Wales are: (1) presume (unless otherwise observed) that the customer has the mental capacity to make a decision; (2) individuals should be supported to make their own decisions; (3) individuals are allowed to make unwise decisions; (4) an act done or decision made must be in the customers ‘best interest’, when the customer lacks capacity (e.g. declining an application for credit on these grounds, even if is affordable for the customer); (5) any act made or decision taken on behalf of someone lacking capacity must be the ‘less restrictive option’ (this will not normally apply in credit situations).

Box 3: meet Robert

Robert is 24, has been working in retail for the last three years, and lives in Leicester.

He is thinking about obtaining a loan to cover some unexpected costs.

At present, Robert does not have any difficulties with decision-making.

He is able to understand the information that has been given to him about the credit product he wants, and he can remember its key features and repayment terms.

Robert is also able to weigh-up the options presented to him about different interest and repayment options, and is able to reach and communicate a decision about which product he'd like to choose.

He doesn't need assistance from his creditor with any of this, or anyone else.

Although he decides to put the loan application 'on hold' for a while, he currently has the ability to make a decision about entering into the credit agreement.

Box 4: Robert three months later

It's three months on.

Robert is still 24, still working in retail in Leicester, and still thinking about applying for that loan.

However, what has changed has been Robert's health. He has been having treatment for an ongoing condition, and one of the side-effects of this treatment is that it has affected his concentration and ability to recall information sometimes.

The loan

Robert is finding it difficult to concentrate today, and hasn't been able to make much sense of the new information he's just read about the features and conditions of the loan.

However, he has decided that he does want the loan, and has now contacted the creditor to apply for it, explaining that he is extremely confident it is the product for him.

Starting the application

Despite this, Robert quickly becomes frustrated about all the questions he is being asked during the loan application process, and all the hoops he feels he is being made to jump through.

He also continues to experience problems with concentration and memory.

At this point in time, Robert may not have the ability to make a decision about his borrowing. He may be experiencing a problem that could impede his ability to understand, remember, weigh-up and communicate an informed decision.

What will his lender do?

But will his lender recognise this?

If not, what will the consequences and outcome be for Robert?

Equally, if the creditor does identify a potential decision-making limitation, what support might they give to ensure Robert can make a decision?

B Behaviour and talk: the B of Bruce

It is important that staff look at both customer behaviour and talk for clues, cues or indicators of a potential decision-making limitation (whether this is a mental capacity issue or something different).

Instead of relying on a customer to disclose a limitation, and then acting upon this, staff should routinely and proactively monitor for any difficulties that customers are having with memory, understanding, communication, or evaluation.

Consequently, staff need to consider both what is explicitly said by a customer, as well as the way in which a customer says this.

Furthermore, the way in which a customer is behaving and acting – such as any evident confusion or diminished concentration – during an application can also provide important insights.

R Remembering: the R of Bruce

An inability to remember and recall relevant information during the credit application can make it difficult for customers to make decisions.

What is remembering?

Memory describes our ability to retain (store) and recall information.

When we remember, we are able to bring back a fact, event, or situation into our minds. Sometimes we also refer to this as 'recall'.

Why is it an issue during an application?

For a customer to be able to make a decision about entering into a credit agreement, they need to know some key information about the product – this can include how much they are borrowing, how much is to be repaid, and over what time period repayment is to be made.

Consequently, at the point a customer makes the decision, they need to be able to have not only understood this information, but also to be able to remember it, so they can use it to inform their decision-making.

This is key – at the points in a credit agreement where a customer has to make a decision, customers should be able to recall and remember the relevant information needed to make that decision.

Box 5: Robert and remembering (1)

You are not entirely sure whether Robert is experiencing any difficulties in his ability to remember or recall information.

He seems unable to recall some of the personal information needed to apply, and has on two occasions gone very quiet while you've been speaking, only to then ask you to repeat what you said.

He appears to be struggling with what is going on. You therefore decide to talk to Robert about the situation, and find out if there might be a memory problem.

What about complex or long applications?

Some credit applications can be particularly complex or long (or may even be completed in several stages, 'sittings' or days).

In these situations, before a customer makes a particular decision, a lender may wish to remind them of the key information needed to make that decision.

The lender will need, of course, to make sure that the customer has understood this information (see below).

If a customer shows signs that they have difficulties with remembering information, then support should be given so they can recall relevant information in order to make a decision about the credit product (see 'support' below).

How common a problem is it?

Our survey research indicated that across a year, lenders with 50 credit application staff could have 1,200 encounters with customers with serious difficulties with memory and remembering.

This would rise to 2,400 in a lender with 100 credit application staff, 6,000 with 250 staff, and 12,000 with 500 staff (see page 16).

This is therefore an active challenge that staff are encountering, and one which can both potentially affect decision-making, and lead to customer detriment.

How can these problems be identified?

Staff can look out for the customer:

- being clearly unable to retain the information and explanations they provide
- appearing confused about the personal or financial information they are seeking
- appearing unable to recall or communicate basic personal information (fully or partly)
- providing conflicting answers to questions
- asking the same question repeatedly
- appearing to have no awareness of their own financial circumstances
- having difficulty following instructions, or losing track of what needs to be done.

Staff may also look for the customer:

- seriously struggling to remember the words they want to use to answer a question
- losing the thread of a conversation, not following what is being said, or starting to talk about an entirely different matter
- abandoning a task or activity before it has been finished or completed.

Some customers may ask for a written note, or a summary of the discussion – while this can be an indication of a memory difficulty, this is not always automatically the case.

Where a potential memory difficulty has been identified, staff should speak further with the customer to establish whether this is affecting their ability to make a decision.

How to talk about memory problems

Identifying a customer with a potential memory difficulty represents the first step towards addressing that problem.

To achieve this, staff need to be able to:

- move from identification to conversation
- establish if an actual (rather than potential) difficulty exists through careful questioning.

Clearly, some customers may not realise they are experiencing a memory problem. In these situations, staff will need to use questioning alone to establish if a difficulty exists.

Moving from identification to conversation

To start a conversation about any decision-making limitation, staff simply need to let the customer know what they've picked-up on.

Staff can do this in several ways including:

Box 6: Robert and remembering (2)

After asking Robert about his memory, and some of the answers to the questions that he gave, you conclude that a memory difficulty does exist.

You begin to make changes to the way in which you have been engaging with Robert, including simplifying information (without losing essential detail), repeating key information, and offering to provide further written resources.

However, you do not stop there – you are concerned that there may be other accompanying decision-making limitations.

So you proceed to consider understanding, evaluation (weighing-up), and communication.

Showing they have been listening:

"I can see that you are really trying to recall that bit of information, but it's proving a bit difficult to remember."

Normalising the situation:

"When they need it, we can provide our customers with more support or time to sort out any difficulties they are having with remembering details. Would this help?"

Simply by being direct:

"Can I ask you a question – is everything OK at the moment? Is there a way I can make this application easier for you to complete?"

The aim here is to simply get a customer engaged and talking about a potential problem. Where a customer does begin to talk about a difficulty, staff can either decide to move straight to support, or to find out more (including 'careful questioning').

Careful questioning (to establish a problem)

In some situations, careful but direct questioning can help to establish whether a problem exists, and what it involves.

This is not about setting an examination or 'grilling' the customer. Instead, it involves gently probing to establish if the customer can recall information that is relevant to the decision they need to make.

To do this, staff should ask about key information shared with the customer in the credit application such as:

“...can you tell me, what type of loan are you applying for today?”

“...and how much are you are applying for?”

“...and what is the monthly repayment on this loan?”

These are clearly quite specific questions – however, as long as they relate to relevant information that customers have just been given, they can help to provide an indication of whether a difficulty exists.

How can these problems be supported?

If a customer requires support in retaining and recalling information, staff can assist by:

- repeating information
- simplifying, where possible, or re-explaining the information (so there is less to remember)
- asking how best to help the customer retain the information (if this is a problem)
- asking if the customer would like the information in writing, or if there is another way staff can help them to remember
- asking if someone else can assist (perhaps a partner, family member, or a third-party).

Where a customer has recognised they have a problem with their memory, staff should always also ask the customer what support they might need – while this may not always be able to be given, customers will often know what will help them best.

Understanding: the U of Bruce

A customer cannot make a decision during a credit application if they do not understand the information they are being presented with.

What is understanding?

Understanding describes our ability to see the meaning or importance of something. This could be a piece of written information, something spoken, or even an event.

Why is it an issue during an application?

Understanding is central to decision-making: a customer needs to be able to grasp and recognise the details of the credit arrangement they want to enter into.

This includes how much they are borrowing, what type of product they are applying for, and what this means in terms of overall and instalment payments.

Box 7: Robert and understanding (1)

Robert clearly wants to get the loan product he is applying for, and has talked about this throughout the application.

While he seems focused on this, he seems less clear about how much the loan will be in terms of repayments, or the period it runs for.

You still think this might be a difficulty with memory, but you do not want to rule out other kinds of difficulties, including understanding.

You therefore continue to establish whether a difficulty might exist.

A problem with understanding can mean that a customer finds it more difficult to grasp or see what they are becoming involved in. If this is not identified and overcome it can result in customers taking out unsuitable credit products.

What exactly needs to be understood?

Clearly, lenders should aim to provide credit products, arrangements and explanations that all customers find straightforward and simple to understand.

However, when it comes to decision-making, a customer should understand the key details of what they are entering into.

This will differ from product to product, but broadly includes – although is not limited to – what type of product they are applying for, the terms of repayment (including overall and instalment payments), and the interest rate and any accompanying charges.

Again, this is key – at those points in a credit agreement where a customer has to make a decision, they should have understood the information needed to make that decision.

What about complex or long applications?

In complex or lengthy applications, staff should be working with all customers to break any information into shorter ‘segments’.

Furthermore, staff may wish to present a series of more focused questions about specific aspects of the credit agreement, which builds understanding towards an overall decision to enter into the contract.

How common a problem is this?

Our survey with frontline staff indicates that in a typical month, **four customers** will be encountered who have serious difficulties with understanding.

Across an entire organisation in a year, this could be equivalent to 2,400 encounters in a firm of 50 staff, 12,000 in a firm of 250 staff, and 24,000 encounters across 500 staff (see page 17).

How can these problems be identified?

Staff can look out for the customer:

- clearly not understanding what they are applying for
- not grasping how the credit will work in practice (including repayment and the consequences of non-repayment)
- not being able to provide relevant answers to questions
- becoming upset or distressed (as a consequence of struggling to understand what they are applying for)
- appearing confused about the personal or financial information staff have asked for.

Talking about these problems

Staff will want to move from the identification of a potential difficulty to a conversation to help establish the facts of the situation.

To do this, staff can repurpose some of the conversation starters and questions in the previous section on memory, as well as:

"...tell me, in your own words, why are you applying for this credit product today?"

"...and what will taking out this credit product mean in terms of repayment?"

"...and what are the benefits and costs of doing this?"

The above are examples – staff should gauge understanding by asking about the key aspects or features of the specific product that customers have applied for.

During these conversations, staff will sometimes wonder whether customers are experiencing a decision-making limitation, or a general lack of financial capability.

In many respects, as we have noted before, the underlying causes of customer difficulties are often not known – consequently, staff should work to provide reasonable support to overcome any difficulty, regardless of its origin or source.

Box 8: Robert and understanding (2)

Robert does appear to also have a difficulty with understanding.

He mentions that this is to do with the medication that he is taking for a health problem, which is affecting his concentration and attention to detail.

You discuss this a little further to understand more about this situation, as it may be helpful in building a clearer picture of Robert's situation. In doing this, you comply with organisational policy on handling these situations.

Again you start to provide Robert with support to understand the product he is applying for, but you also now want to check any issues with weighing-up or communication.

How can these problems be supported?

Where a customer requires support to understand information, staff can assist by:

- asking the customer to summarise what they understood (so staff can address any misunderstandings)
- repeating the information that was shared with the customer
- where possible summarising, simplifying and rephrasing the information that was shared (retaining any regulatory or legal detail that is required)
- using as little jargon as possible.

Staff can also:

- take more time to explain the information (with regular pauses to check the customer has understood)
- use some 'real life' examples to help establish context and meaning
- avoid immediately assuming that a person doesn't understand, when in fact they may instead have another difficulty (such as a communication or memory difficulty, or even a hearing impairment).



Communication:

the C of Bruce

Carefully assessing customer communication is important. This is because while a customer might be able to communicate a decision, it does not mean they have understood, remembered, or weighed-up the information they've been given.

What is communicating?

Communicating describes our ability to share our thoughts, ideas, experiences, emotions, or other information.

It can also be viewed as a way in which we can **express a choice or decision**, which has particular relevance to credit applications.

In credit applications involving telephony or face-to-face contact, the main method of communication will be spoken (although written correspondence may be referred to during discussions).

However, some customers may have their ability to communicate made more challenging through physical health or disability issues (such as hearing impairment).

Potentially more rarely, in some situations customers may wish to use visual aids to communicate non-verbally.

Why is it an issue during an application?

It can be tempting for staff to assume that 'communication' is the easiest issue to identify and possibly also support – however, this is not always the case.

Customers with communication difficulties often have the ability to make a decision, but are restricted in their ability to convey this.

This can mean that a member of staff has to take their time to understand how a customer can best communicate, and to respond to this appropriately.

How great a problem is communication?

Our survey research with frontline staff indicates that in a typical month, **three customers** will be encountered who have serious difficulties with communicating.

Across an entire organisation in a year, this could be equivalent to 1,800 encounters in a firm of 50 staff, 9,000 in a firm of 250, and 18,000 encounters across 500 staff (see page 17).

Box 9: Robert and communication (1)

Robert has repeatedly communicated his decision to you – he would like to obtain the product you are offering.

However, as you have started to work your way through the BRUCE protocol, you have provided additional assistance to Robert to help him overcome problems with understanding and memory, and you will also go on to consider his ability to weigh-up a decision.

Therefore, once all these steps are complete, it is important to check that Robert still makes the same decision, or whether he has changed his mind given the assistance you may have provided.

Additionally, as noted earlier, in our survey of frontline staff, 44% reported that customer difficulties in speaking English were 'always' or 'often' the reason for difficulties with understanding.

What then about non-English speakers?

Customers who have difficulties speaking English will find communication difficult – while this is obvious, what might be done?

As noted in Box 10 (overleaf), there are at least five questions that lenders should consider in these situations:

- can the application be taken forward?
- if so, should interpretation be provided?
- if so, has this been fully prepared for?
- if so, has the customer been able to make their decision about the application?
- if so, is there any other information or concerns which need taking into account?

Importantly, Box 10 only provides suggestions on the actions that firms might consider, but individual lenders will have their own policies on these issues which need to be consulted.

Credit applications and customers with limited or no English is an issue which many individual firms are currently considering, and further discussion and guidance on this issue will help to clarify some of the actions that can be taken.

Box 10: customers who do not speak English

1 Can an application be taken forward?

This will depend on organisational policy:

- some firms may want all credit applications or sales activity to be conducted in English for auditing and quality assurance purposes, as well as addressing potential risks around fraud or financial abuse – in these circumstances, staff need to be able to explain the reasons why the application cannot be taken forward
- other organisations, however, will want to set this against wider issues of inclusion and community provision, and to help customers access the financial services that they need
- firms therefore need to carefully consider the practical, legal, and regulatory issues that are raised by this challenge, and refer to internal policies and guidance on this matter.

2 If so, should interpretation be provided?

Where a customer is unable to speak or understand English, and a firm wishes to take forward a credit application, then some form of interpretation will be needed. In doing this, the organisation will need to decide whether to:

- use an external interpretation service (which will incur a charge, but where a range of languages will be covered)
- use bi-lingual staff who can handle the application in the customer's language (but where the range of languages spoken by staff will be more limited)
- use a member of staff who speaks the customer's language, but who cannot lead the application, and instead will interpret for both the staff member and customer
- or allow a family member or another nominated third-party to interpret for the customer – if this is the case, then firms should insist on an adult who is suitably proficient in English and the customer's language, and who will need to provide identification which the organisation will record and store.

While an organisation may conduct a credit application in a customer's language, they will need to explain if any subsequent correspondence or written materials about the application will be in English.

3 If so, has this been fully prepared for?

- Where an interpreter is used, it will need to be explained to all parties involved that this will take additional time (compared to a regular application), and that personal data will need to be disclosed through the interpreter (and consent will be sought for this).
- In addition, staff need to ensure that specific loan or banking terms are fully understood by both the interpreter and customer.

4 If so, has the customer been able to make their decision about the application?

- An interpreter can help a customer to engage with a credit application, and communicate a decision.
- However, a need remains for lenders and intermediaries to consider whether the customer has any difficulties in understanding, remembering, or weighing-up the information they're given – BRUCE can be used for this both in terms of identification and support.

5 If so, is there any other information or concerns which need taking into account?

If other concerns arise – beyond decision-making limitations – then staff should take appropriate action. Where family members or third-parties are involved, this may include indications of financial abuse or coercion.

Identifying problems with communicating

Staff can look out for the customer:

- being unable to communicate basic personal information about themselves
- being unable to communicate their borrowing decision by any reasonable means
- not directly answering questions, and sharing less relevant information
- avoiding, in the case of literacy or numeracy issues, written information or figures
- repeatedly answering just 'yes' or 'no', or simply 'echoing' the last answer or piece of information given to them by staff.

Talking about these problems

By definition, discussing communication problems with a customer can be difficult.

However, staff can begin to consider the communication abilities of the customer by simply asking an open question such as:

"...can you tell me what your decision is?"

It is also possible to ask customers questions such as:

"what is the best way to provide you with this information?"

How can these problems be supported?

As with all the steps described so far, every effort should be made to help communication (and in turn, support decision-making).

Therefore where customers struggle with communication, staff can:

- work to identify their preferred method and channel of communication
- consider the involvement of a third party (including a family member)
- accept different forms of communication, even if this is not the firm's preferred method
- allow more time for the customer to communicate a decision (including 'pausing' the process, to help customers overcome the effect of any problem, and place them on an equivalent footing to borrowers who do not have such limitations)
- ensure that communication channels remain open as much as possible.

Importantly, staff should remember that while communication is an essential part of decision-making, it does not solely determine a customer's ability to make a decision.

Staff will therefore need to take into account the other three steps of understanding, remembering, and evaluation (weighing-up).

E Evaluation (weighing up): the E of Bruce

Although the 'weighing-up' or 'evaluation' of information is related to a customer's understanding of a credit product, it is important to distinguish between the two actions.

What is evaluation (weighing-up)?

Evaluation is about our ability to reach a judgement about the value of something – be that a credit product, or something else.

Why is it an issue during an application?

When a customer evaluates or **weighs-up** information during a credit application they:

- are actively considering the options and choices available to them in that application
- thinking through the personal consequences of taking these different options
- in order to help make an *informed decision*.

It is important lenders remember that this informed choice is personal to the customer – it is not about making a decision that a lender might make, and indeed the customer's final decision may appear 'unwise' (see below).

Lenders are only expected to assist customers in their weighing-up of options related to the credit product (such as differing numbers of repayment instalments), and should not be expected to give advice or opinion, or to help weigh-up the products of competitors.

What is an 'unwise decision'?

Customers can make 'unwise decisions'. These are decisions that:

- others probably would not have made based on the same available information
- but where a customer has considered the consequences, benefits, and costs, and wishes to proceed with the decision

Box 11: Robert and evaluation (1)

Robert has already exhibited difficulties in understanding and remembering, so you are anticipating problems here also.

However, rather than assuming this, you work to consider his ability to 'weigh-up' the advantages and disadvantages of a particular choice.

When you talk to him, he tells you that he didn't understand the three or four options open to him, became tired, just picked the first repayment and interest option on the list, and lost concentration.

- and where a customer should not be assumed to lack mental capacity because of this unwise decision (unless other indicators of incapacity exist).

Lenders are not responsible for making decisions for a customer, but should offer reasonable help to enable the customer to make informed decisions, while also identifying any decision-making difficulties.

How common a problem is evaluation?

Our survey research with frontline staff indicates that in a typical month, **two customers** could be encountered who have serious difficulties with weighing-up.

Across an entire organisation in a year, this is equivalent to 1,200 encounters in a firm of 50 staff, 6,000 in a firm of 250, and 12,000 encounters across 500 staff (see page 17).

Identifying problems with evaluation

Staff can look out for the customer:

- exhibiting difficulties with understanding – on the basis that if a person struggles to understand and retain relevant information they will struggle to then evaluate it
- expressing their difficulty in considering the options available to them, or making a choice between them.

Some customers will simply be indecisive and will often take considerable time to reach a decision (if a decision is indeed reached). This differs from a customer who struggles to reach a decision because of an underlying mental capacity issue, or other limitation.

Box 12: Robert and evaluation (2)

You speak to Robert about his thinking, and the difficulties he has experienced in weighing-up the information provided.

Robert explains that due to these difficulties in understanding the information, and trying to work out the consequences of different options, he gave up and picked the first repayment and interest option on the list.

With this information, and insights gained from working through each letter of BRUCE, you again try to provide Robert with the support needed to overcome these difficulties.

However, you also are in a position to decide on the basis of everything you have seen, whether Robert has the ability to make a decision about entering into a credit agreement.

Talking about these problems

Staff can begin to address difficulties with evaluation by asking simple open questions:

"...why have you chosen to apply for this repayment option, rather than another option?"

Staff may also want to help the customer 'break down' what might appear complex or large choices into smaller considerations about the different features of the product.

Supporting customers

Staff can support customers experiencing difficulties in weighing-up information by:

- discussing each feature or option individually – this keep things simple
- asking if someone can support or help the customer with this evaluation.

Where literacy issues do not exist, offering to pause the application and provide written information on the product, so the customer can consider this at their own pace:

- allowing the customer reasonable amount of time to consider the options.
- check if there is a clear series of steps to the customer's thought process that leads from the information to their decision.

As noted earlier, even if asked, staff should not offer advice or guidance to the customer – this is their own decision to make.

Summary: can a customer make a decision?

Once a staff member has used BRUCE to identify and support a customer with a decision-making limitation, they should consider all the steps together to ask: can the customer make a decision?

Should credit be granted?

The BRUCE protocol has been developed to help lenders to identify whether a customer has the ability to make a decision to enter into a credit agreement.

Importantly, it also allows lending staff to actively provide reasonable support to help customers overcome any decision-making limitation that is identified.

Consequently, while lenders will ultimately decide whether to provide credit to customers on the basis of a number of factors, BRUCE will help lenders take mental capacity (and other decision limitations) into full account.

Box 13: Robert's outcome

At the end of your use of the BRUCE protocol, you have both identified a number of problems with Robert's decision-making, and also taken steps to help Robert overcome these.

On the basis of what you have seen, and having discussed this with Robert, you conclude that he is unable to make a decision today about a loan.

You explain this to Robert, and note that while he can afford the loan that you just want to make sure he makes an informed decision.

You therefore tell Robert that you have paused (rather than declined) the application, and that you will arrange for a member of your firm's specialist team to call him in the next 72 hours to pick-up the application process again.

While this introduces a short delay to proceedings, this ensures that Robert is not declined credit, but is instead given the extra specialist support he needs.

Box 14: BRUCE overview	Identify: What should you look out for?	Support: How can you help?
B ehaviour and talk	<ul style="list-style-type: none"> listen to what the customer is saying but also observe their behaviour for any clues or indicators of a possible decision-making limitation 	<ul style="list-style-type: none"> allow the customer time to speak and don't feel the need to 'jump in' at every pause
R emembering	<ul style="list-style-type: none"> being clearly unable to retain the information and explanations you provide appears confused about the personal or financial information you are seeking appears unable to recall basic personal information (fully or partly) provides conflicting answers to questions asks the same question repeatedly appears to have no awareness of their own financial circumstances has difficulty following instructions, or loses track of what needs to be done abandons a task or activity before it has been finished or completed 	<ul style="list-style-type: none"> repeat information for the customer simplify or re-explain the information (so there is less to remember) ask how best to help the customer retain the information (if this is a problem) ask if the customer would like the information in writing, or if there is another way staff can help them to remember ask if someone else assists or can assist (perhaps a partner, family member, or a third-party)
U nderstanding	<ul style="list-style-type: none"> clearly not understanding what they are applying for (including information about the consequences – in particular the key risks – of entering the credit agreement) becomes upset when struggling to understand what they are applying for appears confused about the personal or financial information you are seeking 	<ul style="list-style-type: none"> ask the customer what they didn't understand repeat/summarise what was said/ presented simplify/rephrase what was said/ presented use as little jargon as possible keep things simple and concise and most importantly, ask the customer to summarise what they did understand (so you can address any misunderstandings)
C ommunicating	<ul style="list-style-type: none"> customers who appear unable to communicate basic personal information customers who are unable to communicate the borrowing decision by any reasonable means customers who repeatedly answer just 'yes' or 'no', and who simply 'echo' the last option or piece of information given to them by staff 	<ul style="list-style-type: none"> identify their preferred method and channel of communication consider the involvement of a third party (including a family member) accept different forms of communication, even if this is not the firm's preferred method always have a Plan B (in case the main communication channel breaks down) allow more time for the customer to communicate a decision (including 'pausing' the process, to help customers overcome the effect of any mental capacity limitation, and place them on an equivalent footing to borrowers who do not have such limitations)
E valuating	<ul style="list-style-type: none"> customers who consistently struggle to weigh up at various points of the process customers who ask for your opinion rather than asking you to summarise the key options available customers who keep changing their mind without giving a reason 	<ul style="list-style-type: none"> discuss each option individually – this keep things simple ask the customer if someone supports them offer to write any information down in a letter, so the customer can consider them clearly allow the customer a reasonable amount of time to consider the options

7 Intermediaries, lenders, and decision-making limitations

A credit intermediary^A does not directly provide credit themselves, but helps customers obtain credit from a third-party lender.

Credit intermediaries are sometimes also known as brokers, dealers, agents, or representatives.

In our research interviews and round-table, intermediaries and lenders reported that identifying and supporting decision-making limitations can be difficult.

This section considers this (and other challenges), while reflecting on how intermediaries and lenders can use protocols like BRUCE to help customers.

What is intermediated credit?

A credit intermediary does not directly provide credit, but instead helps a customer obtain credit from a third-party provider.

Intermediaries can be individuals or firms. They may receive a fee or commission for introducing a customer to a lender (such as when a broker arranges mortgage finance).

The credit intermediary may be selling a product that the customer is purchasing (such as when a customer buys a motor vehicle, or a retail product, at 'point of sale').

What happens?

While business models vary, intermediaries effectively introduce a customer to a lender. Some will be 'tied' to one or more third-party lenders. They will use these relationships to find a product that meets the customer's needs and repayment preferences. Others may be fully independent, and will search a larger number of lenders to find a product.

Examples of credit intermediaries include motor dealers, retailers and mortgage brokers who help consumers access finance to purchase cars, household goods or property.

How is this relevant to decision-making?

Throughout their contact with intermediaries and lenders, customers will need to decide which products and lenders to enter into a credit

arrangement with. Identifying and supporting those customers with decision-making limitations is therefore key.

What challenges exist?

To date, there has been relatively little discussion about intermediated credit and decision-making limitations.

Our study therefore undertook a series of interviews, discussions, and a roundtable debate with intermediaries and lenders on the challenges of decision-making limitations.

These identified a range of issues (see Figure 9, page 41), from which three key points emerged:

- 1 **Understanding:** generally, how does vulnerability apply to intermediaries, lenders, and customers?
- 2 **Practice:** how should intermediaries and lenders identify and support customers?
- 3 **Responsibility:** who should do what when it comes to decision-making limitations?

In this section, we consider each of these issues in turn, providing practical guidance wherever possible, but also highlighting where further collective thought is required.

1. Understanding (and applying) vulnerability

During our interviews and discussions, intermediaries and lenders said they lacked *neither awareness nor high-level guidance* on vulnerability and mental capacity.

Instead, what was identified as lacking were common practical tools to meet the specific challenges that intermediated credit faced in relation to these two issues.

In this guide, we make an initial contribution towards providing a number of these tools.

However, the intermediaries and lenders we spoke with reported they would like to see further action to:

- establish how higher-level definitions and regulations on vulnerability can be translated for the intermediated credit sector
- develop a single training course on mental capacity that intermediaries and lenders can both access
- address the specific practical challenges that intermediated credit faces on these issues of vulnerability and capacity.

^A This term is used in a generic, rather than regulatory, sense.

In short, the firms that we spoke to, reported that in relation to *vulnerability and mental capacity* they would welcome a more universal and coordinated initiative, rather than the firm-by-firm approach in place.

This is clearly different from other aspects of the relationship between lenders and intermediaries (where agents or brokers want a consistent approach from each lender, and lenders define their own requirements).

2 Practice: what can be done?

In this section, we recognise the practical tools that already exist for working with customers with decision-making limitations, or other forms of potential vulnerability.

Identification: BRUCE and beyond

As we have seen, BRUCE can be used to identify and support customers who may be experiencing decision-making limitations.

This tool can be used by those involved in intermediated credit without adaptation.

However, firms can also further improve identification by **encouraging 'self-disclosure'** – encouraging customers to self-disclose a known capacity limitation or vulnerable situation can be a useful strategy.

To achieve this, staff need to provide reassurance to customers that they will not be penalised for disclosing such information, and this potentially can result in additional support being provided.

This reassurance needs to address the barriers to disclosure – with examples from research being outlined in Box 15 – including customer concerns about unfair treatment, damaging data-sharing, or fears about future credit or current benefits being impacted, all need to be considered.

In short, staff should be seeking to provide clear and adequate explanations about the benefits of the customer disclosing.

Some organisations have started to do this and have used a range of channels to routinely explain why disclosures of a capacity limitation, difficult personal situation, or destabilising life event, will always be heard, considered seriously, and taken into account.

Box 15: barriers to disclosure

Research conducted in 2016 by the Money and Mental Health Policy Institute, surveyed nearly 5,500 people with experience of mental health problems¹.

This found that 8 out of 10 respondents choose not to disclose these mental health problems to their creditor. When asked why, participants said that they:

- weren't aware it would make a difference (60%)
- disliked telling people about their health problems (55%)
- felt they would not be treated sensitively and sympathetically (52%)
- were concerned how the information would be used (40%)
- were worried that disclosure would affect future access to credit (35%)
- thought they would not be believed (31%)
- thought they would be treated unfairly (30%)
- were concerned that debts would be repaid from disability benefits (7%).

Notes: based on 3,787 participant responses to the question 'If there were occasions when you did not tell an organisation about your mental health problem(s), what were the main reasons for this? (Please tick all that apply)'

Starting a conversation

As noted earlier, identifying a customer with a potential decision-making limitation is the first step towards addressing that situation.

However, to achieve this, staff need to move from identification to conversation – and for many staff this represents a challenge.

This is understandable. Raising such an issue with customers can provoke fears about causing offence.

Staff may also worry about the mechanics of asking customers about decision-making limitations, or what the right words to open a conversation might be.

Equally, staff can have concerns about whether their organisation would endorse such an approach, and what support or response they might receive.

Figure 9: Intermediated credit interview quotes

The challenge of identifying vulnerable customers

As has already been shown to be the case with lenders that have direct contact with their customers, it can be difficult for intermediaries and lenders to identify vulnerable customers and encourage them to disclose information about any potentially vulnerable situation:

How can the industry encourage disclosure?

"We need to encourage customers to disclose issues... Industry needs to find a way to get customers to disclose."

Staff need to consider all applicants

It is "really important that both customers (married) are spoken to on every application. At broker stage, I don't think this always goes on and is so important as communication is the key to understanding vulnerability."

Customers may hide their situation in order to get credit

It is "difficult to always get that the customer is vulnerable as it is hidden as they want something from us".

A need for improved explanations and reassurances

"More needs to be done to ensure customers understand that information they give will not necessarily mean the lending will not be approved."

Identifying vulnerability is about inclusion not exclusion

"Stress that being vulnerable should not be a reason to exclude people from credit."

Concerns around the sharing of personal data

In order for credit intermediaries and lenders to work together to support a vulnerable customer, it is likely that data will need to be shared between the two parties. These organisations and their staff may therefore find themselves torn between the desire to support the best interests of the customer and the need to adhere to the Data Protection Act:

Collaboration and sharing of information

"Collaboration is a big thing between dealers, brokers and lenders. There, ideally, should be more information and facts to be gathered and shared between all parties."

Easier communication between parties

There needs to be "easier communication of concerns about vulnerable people between brokers/retailers and lenders".

The need for consent

"We as a lender do not know what conversations the broker and customer has and what is discussed in relation to vulnerability. No information is really passed on from broker to lender on vulnerability, so how do we close this gap? Also the customer has disclosed it to the broker, so may not have given the broker consent to pass on information."

Support that is commercially-realistic

One of the key issues identified from discussions with firms was the importance of ensuring that the support given by lenders – and the support that lenders may ask intermediaries or brokers to provide on their behalf – does not place an excessive burden on staff, or make it considerably more difficult for all customers to apply for credit:

Boundaries

"Lenders aren't counsellors or medical professionals, so how do you know you have done enough?"

Commercially-realistic

We need "clarity of how to identify vulnerable customers and how best to treat them fairly; whilst taking commercial challenges into account."

Scale

"It would be good to identify approaches that lenders can take to working with multiple (hundreds) of brokers to identify and work with vulnerable customers, given the commercial sensitivities between the two parties."

Consequently, even where the strongest of beliefs exists that a customer might have a potential decision-making limitation, barriers like these can stop staff moving from identification to conversation.

To overcome this, staff can take three steps to help start such conversations:

- A set-up the conversation
- B start-off the conversation
- C stay-with the conversation.

A Set-up the conversation

Staff should always consider whether this is the right moment to raise the issue. If, for example, the customer is speaking in a public space, they will probably not want to discuss any health or other difficulties, so unless a quieter and more private space can be found there may be little point in attempting to do so at this point in time.

If it isn't a good time to raise the issue, then a note or arrangement should be made to re-contact the customer – but as soon as possible, to not let it drift.

In getting themselves ready to ask about decision-making limitations or wider vulnerable situations, staff should remind themselves that most customers will not object to a simple but polite question about their wellbeing and situation, and in fact may welcome this concern.

If a situation is disclosed by a customer, staff should know how to use techniques such as TEXAS (to handle disclosure – see overleaf) or IDEA (to explore a situation – see overleaf also), or how to refer to colleagues who will take on the task.

B Start-off the conversation

Depending on what staff know already about a customer, they can start a conversation by:

- Showing they have been listening:
"I can see that you are really trying to recall that bit of information, but it's proving a bit difficult to remember."
- Normalising the situation:
"When they need it, we can provide our customers with more support or time to sort out any difficulties they are having with remembering details. Would this help?"
- Simply by being direct:
"Can I ask you a question – is everything OK at the moment? Is there a way I can make this application easier for you to complete?"

- Showing they have been observing:
"I noticed that our paperwork might be a little difficult to follow – can you tell me how we could make it easier for you to complete it?"
- Referring to leaflets and resources:
"I'm not sure if you've seen our 'Help's At Hand' leaflet, but it explains what help we can give if something unexpected or difficult happens. Can I tell you more?"
- Reminding customers what help there is:
"I just wanted to ask, are there any health or other issues we should know about? We will treat these confidentially, and they will help us to help you."

C Stay-with the conversation

Often starting a conversation about a potential mental capacity limitation, or a vulnerable situation, may take a few exchanges to 'get going'.

Most commonly, customers will often instinctively say they are fine (*"I don't have a problem, thank you"*).

This is natural – customers are often understandably worried about where the conversation might go.

Therefore, if it feels right, you can reassure the customer:

"Not a problem. But if something is causing you difficulties, I will listen and try to find ways to help you. Is there anything causing difficulties?"

"Many of our customers found it helpful to talk about their wider situations so that we could offer further support."

At this point, after a pause, customers will often change their position and open up to you. However, if the customer really doesn't want to talk, then staff should accept this, but keep the door open:

"OK, do let me know if there is an issue though. We will always try to help."

"That's OK, but if anything changes in the future I am here to help you."

If staff do this politely, they won't offend the customer, as they will know that the staff member was trying to help.

Drawing on other tools

There are also other tools which the debt collection sector have been using for some time when working with vulnerability, but which may not be familiar to those involved in intermediated credit:

- **TEXAS** – introduced in 2010, this arguably now represents an industry-standard tool for handling disclosures of a wide range of vulnerable situations
- **IDEA** – introduced after TEXAS, IDEA was developed to help staff understand more about a customer's vulnerable situation, and to complement the initial disclosure management tool of TEXAS (IDEA stands for Impact, Duration, Experiences, and Assistance)
- other tools such as **SPIDER** (for breaking 'bad news' about a credit application to a customer in a vulnerable situation), **BLAKE** (for handling customer disclosures of suicide), and **CARERS** (for working with third-party carers) can also be used by lenders and intermediaries.

These tools – and other techniques – can be found in the 'sister' publication *Vulnerability: a guide for debt collection*².

3 Responsibility: 'who' does 'what'?

CONC indicates that lenders are responsible for the actions of their agents (who are also typically FCA regulated).

This was echoed in our interviews and roundtable, with intermediaries and lenders both being clear on their regulatory roles.

However, in terms of how this can be practically and consistently achieved, there were views on areas where clarification and further guidance was needed.

Range of perspectives

During our interviews and discussions, some lenders reported that they assumed that the responsibility for vulnerability lay solely with their firm's staff and processes, and that they would not require an intermediary to contribute to this.

Meanwhile, some intermediaries questioned this position, particularly where they had face-to-face contact with customers. Such contact, they observed, provided more opportunities to identify a difficulty than a later telephony-based contact with a lender.

Other intermediaries and lenders, meanwhile, either reported an assumption that the other party would adopt this role, or called for a shared and more co-ordinated response than currently existed.

Decision-points are key

Clearly, in practice, customers will need to make decisions at different points in time – some of these will occur in their contact with an intermediary, while others will occur at the point of application for credit with a lender.

Consequently, it is important that both intermediaries and lenders take responsibility for their 'part of the conversation'.

This means that whoever identifies a difficulty or decision-making limitation should provide the required support to overcome this.

Firms should also ensure that they are able and ready to share key information, with consent, so that any insight is not lost.

Data-sharing (and explicit consent)

One key consideration when intermediaries and lenders are both working with the same customer is how information about the customer is shared between them.

Where a potential vulnerability is observed, staff should seek the customer's consent to share this with the other parties involved – this information is key, and efforts should be made to secure explicit consent from the customer so that it can be passed on to inform action.

When doing so, staff must be able to clearly explain how their information will be used, stored, and shared.

This is important for two reasons: firstly, compliance with the law and secondly to reassure the customer that their disclosure will be taken seriously, addressed correctly, and stored securely. The benefits of disclosure for the customer can also be outlined. This is important in terms of customer trust and rapport. It is vital, however, that customers receive this explanation before giving explicit consent to their information being recorded. The most straightforward way to ensure consistent and clear compliance with the Data Protection Act on this matter, is to seek explicit consent to record and share data about any vulnerable situation the customer discloses with other parties involved.

8 Online lending and mental capacity limitations

For many customers, applying online for credit and financial products has become the norm.

Such innovation has delivered benefits, but these do not exempt regulated online lenders from addressing the CONC framework.

Fortunately, online lenders may already have the tools to help identify and support customers with mental capacity limitations.

Consequently, what is needed is both innovation and leadership. This section therefore calls for lenders – be they established providers, or entrants ‘building from scratch’ – to step forward and show what is possible.

What needs to be addressed?

No longer representing a future opportunity, but an everyday reality, online applications underpin much of the credit offered today.

It is therefore important that the issue of vulnerability and mental capacity limitations, is addressed anywhere that credit is offered, including online and digital lending platforms.

There are six reasons for this:

1 These customers are already online.

Among the volume of customers applying for online credit will be those with mental capacity limitations – the prevalence of conditions that can result in incapacity (pages 14 and 16), and the growth of online lending, makes this almost certain.

2 Detriment can occur across all channels.

Like face-to-face or telephony contact, online lending can result in detriment. This is a real issue for some customers.

3 CONC applies to all lending channels.

Comprised of recommended guidance and mandatory rules, the FCA’s CONC framework does not exclude any channel or form of lending from its framework.

This means it covers lending in bank branches, through telephone contact centres, and via online platforms.

This is a pragmatic and even-handed approach, and will become particularly important given the number of lenders who already operate exclusively online, or have plans to expand their provision.

4 Online lenders already have insight

Lenders already hold data on the actions that a customer takes when completing an online application – and these can potentially indicate decision-making issues.

These actions can include the way in which a customer enters data, the use of sliders or other features, and how the customer navigates their way through the different pages or application stages.

Data on these actions will typically be used by lenders to improve the design of online application ‘journeys’.

However, these data can also provide direct insights into customer difficulties during an application with understanding, recall, weighing-up, and communication.

We consider this in more detail overleaf, but in short many online lenders may already be able to ‘see’ decision-making limitations.

5 Lenders already act on (some of) this

Many online lenders already use some of these data to monitor customer difficulty during online loan applications in real-time.

The most common example is where a customer is inactive for a period of time – resulting in a web-chat box ‘popping-up’ to offer help or chat to the customer.

Such real-time observation of this indicates that monitoring of customer behaviours and potential difficulty is already happening, and that lenders could also act on other indicators.

Critically, as we explain in this section, this would need to be based on ‘clusters’ of indicators, rather than a single factor like ‘dwell’ or ‘wait’ time.

6 The conditions exist to take action

Taken together, the conditions exist for online lenders – whether established organisations, or new entrants ‘building from scratch’ – to take action.

How might this be done?

Based on projects and discussions our team have undertaken with online lenders, there are at least three actions that can help firms to develop an online mental capacity strategy.

These are presented under the headings of **Identify, Support, and Innovate.**

Are these solutions?

No. Each action aims to stoke further debate and development work, rather than providing a 'solution'.

Isn't this work already happening?

Yes and no. Within the financial sector, there is a strong interest in developing mobile apps and digital tools to help customers with conditions like mental health problems.

However, to date, these apps have often focused on helping customers in vulnerable situations to better manage their money, and to alert a nominated friend or relative when a period of financial crisis or difficulty occurs.

Isn't this positive?

Again, the answer is yes and no. Such apps can empower the customer to take control of their situation. This is welcome, as many customers have called for this.

However, at the same time, identifying and managing difficulties with decision-making or vulnerable situations *should not* be the sole responsibility of the customer – instead, lenders also need to play a role in this.

What does this practically mean?

Practically, this involves organisations building on the current monitoring functions already present in many online lending platforms, and using these to monitor for a range of potential decision-making limitations.

This doesn't mean that online lenders should start jumping to conclusions – a decision-making limitation does not necessarily exist because a customer spent longer than average answering a single application question (they might simply have been interrupted).

Nor does it mean that a customer making a single mistake recalling their home address (due to recently moving to a new home), or entering a random string of characters into a field (as they may have leant on the keyboard), also represents a potential issue. These are all 'normal' events.



A firm is likely to have reasonable grounds to suspect a customer may have some form of mental capacity limitation if the firm observes a specific indication (behavioural or otherwise) that could be indicative of some form of limitation of the customer's mental capacity."

CONC 2.10.8G

However, when a customer enters their date of birth incorrectly an unusually high number of times, or rapidly moves between a 'help' function and the main application, these might indicate a potential difficulty with recall or understanding.

Furthermore, where online lenders see not just one single indication of such difficulty, but a *constellation of indicators*, this begins to paint a more persuasive case for some form of intervention. As we consider in the section on 'support', this may involve a 'small nudge' in the application, more extensive help in the wider digital channel, or taking the customer into specialist telephony support.

Finally... introducing Sanju

We now move to explain further how this could work. However, to bring this to life, we introduce two hypothetical examples involving Sanju (overleaf). These illustrate how the presence or absence of 'online identification' during a loan application, might affect customer experience and outcome.

1 Identify – respond to what is happening

As noted, many lenders already monitor and respond in real-time to the actions of a customer during an online credit application.

Most commonly, this takes the form of a web-chat box 'popping-up' to offer help when a customer has been inactive.

Online lenders, however, also collect data on other actions undertaken by the customer during an application – typically to inform the administration, maintenance and design of the 'digital journeys' that customers take.

Box 16: Sanju without lender action

Sanju is an existing customer. He has a condition which – when he is unwell – affects his ability to make decisions.

While unwell, Sanju applied for a loan online. During the application, he didn't understand the majority of the information presented to him.

Sanju also couldn't remember what he was applying for, and while he got it right in the end, made repeated errors when asked to provide information.

Sanju found it hard to weigh-up the repayment options available to him, and kept clicking between the options, until he got distracted.

Sanju's condition means that he often intensely focuses on small details – but when he wasn't checking the spelling of the web application, or moving backwards and forwards across its sections, he did manage to ignore web chat, and ticked the box that said he 'understood' the T&Cs.

Sanju got the loan he applied for – however, he quickly defaulted on this, and entered serious financial difficulty

However, many of these indicators will also be providing direct indicators and measures of the difficulties that customers may be having during the application with understanding, recall, weighing-up, or communication.

What are these indicators?

Each online lender will collect different data^A, but these can be mapped on to each of the four core aspects of **decision-making**:

- **Understanding**: data will often be collected during an online application about the occasions where a customer makes a data entry error. This includes the entry of the wrong data, repeated failures to provide the information required,

Box 17: Sanju with lender action

Sanju has a condition which – when he is unwell – affects his decision-making ability.

While unwell, he applied for a loan online. He didn't understand the instructions, and kept entering the wrong data. He also kept scrolling up and down to try and find help.

The online loan application picked-up on this behaviour and offered Sanju the opportunity to 'web chat' with an agent.

Sanju, however, didn't respond. He had become distracted by misspelt words he thought he saw on the application page. He spent ten minutes checking each word.

He also found it hard to decide whether he wanted one repayment option or another, and kept clicking between the options.

Again, all these factors were picked-up on by the online application, and when Sanju ignored another 'pop-up help', his application was paused, and he was asked to call a phone number for further help.

Sanju got the right loan in the end. However, he got it one week later, after receiving some specialist support from the bank, a little extra time to get over his illness, and the chance to make a decision with full mental capacity.

and inconsistent answers. Taken together, these can provide an indication of a customer being potentially confused about 'what they need to do' on an application.

- **Recall**: during an application, data will often be collected on the number of problems a customer has in recalling *basic personal information* where requested (e.g. date of birth, home address). This can include how long it took customers to complete the application (including the 'dwell time' on individual questions), as well as how many times customers made mistakes – or changed their mind – when recalling personal data (such as date of birth or home address).
- **Weighing-up**: this is a more difficult concept to measure, but data may be collected on whether a customer exhibits difficulty in choosing between options, including repeated and rapid switching, moving backwards and forwards in an application, and difficulties in completing and navigating multiple-stage applications.

^A CONC does not define what an observation of a potential mental capacity limitation involves, which means it would be incorrect to exclude data and automatically assume that 'observation' only means something seen 'face-to-face', as this would exclude all telephone applications. Nor can we assume that 'observation' only includes direct, real-time and personal interaction with a customer, as this would exclude postal or written applications from CONC.

We therefore cannot automatically assume that online lending applications are excluded from the provisions of CONC – to do so, without further consideration and engagement with the FCA, would introduce a risk into a creditor's operating model. Indeed, it would seem unlikely that online lending platforms would be exempt, given that some financial service firms operate and lend almost entirely on an online platform basis.

- **Communicating:** data will be collected during an online application on customer difficulties with numerical data calculations, form-filling, and indicating a preference. These can provide proxy measures of communication difficulties.

Recognising what such data can tell us about decision-making limitations is key, as it reminds us that data can be observed just as readily as a customer's behaviour can be noted, or a person's words heard.

How might potential indicators be used?

Again, single indicators of a potential customer difficulty with understanding, recall, weighing-up, and communication, should not be used on their own (unless extreme) to indicate a potential problem with decision-making.

Instead, these indicators should be used in combination to build up an overall picture of the potential difficulties that a customer may be experiencing. Once this reaches a 'threshold' or 'cut-off' point, then the customer might be considered to be in need of support and assistance.

What should lenders do?

To explore the potential for such online identification, lenders can take three actions:

- **Review and map a sample of data** – lenders should begin with a sample of online credit application data. This can be used to:
 - *review what information is collected* about the actions a customer takes during an online application – this list of data points will often be held by internal digital staff responsible for designing online journeys, as well as data analytics staff
 - *map each of these data points or fields against each of the four core aspects of decision-making* – understanding, recall, weighing-up, and communication. Taking this step will allow lenders to establish exactly what potential measures of decision-making difficulty exist.
- **Analyse the sample of data** – lenders should also consider what the data sample tells them about customer actions taken during online applications, including a focus on those cases where the data indicates a customer has made multiple mistakes in completing the application, recalling personal information, or communicating their preferences. These will help lenders gain a sense of the types of customer cases where identification, support and intervention might have been both possible, and may have also made a difference.

- **Formalise the implications of this review, mapping and analysis** – on the basis of the above actions, lenders should consider the case for further work in this area, and the development of a plan to take this forward – this is discussed further in 'Innovate'.

Routinely collected customer data: a note

Throughout this section, we have focused on using customer data that is *already routinely collected* for digital design purposes, and which focuses on the actions customers take during online applications.

These twin foci are important – identifying decision-making limitations online is not necessarily about collecting new data, but using existing data in a better way. It is not about focusing on the content of what data are entered, but how these data are entered. Neither is it about developing 'biometric fingerprints' to pinpoint customers elsewhere, but to simply identify customers who are experiencing difficulty in the moment.

2 Support – where a need for this exists

It is important that lenders – and particularly online lenders – think clearly about the support they might provide to customers with a mental capacity limitation. This is because there is no point in identifying such a customer, unless it is also clear:

- **what support** will be provided
- **how this support** will be given
- **when this support** will be offered.

Deciding **what broad type of support** that customers with decision-making limitations will need is less challenging than it sounds – being based on the existing support options within a lending organisation, and also those covered in the BRUCE protocol (page 27).

More challenging, however, is deciding **how this support will be given** to customers who have applied online for credit. Lenders will need to consider if this is provided:

- **During the online application:** if a customer is exhibiting difficulties online, lenders need to ask themselves how will this support be delivered 'in channel'? This involves considering what support can be offered through additional information prompts, improved webchat scripts to address the decision-making limitation which is causing a problem, or even video chat, without 'interrupting' the online loan application.
- **Through the wider digital channel:** lenders should also ask themselves what support or treatment package can be offered through the wider digital channel, and where is the actual online loan application most appropriately paused or interrupted?

- **Via other voice or face-to-face channels:** lenders will also need to consider what degree of need will trigger support being provided through another channel (such as telephony or face-to-face), and what this means for the application in progress.

Finally, when doing this, online lenders will also need to consider how any credit application that is taken out of channel for additional help, temporarily paused, or eventually declined is communicated to the customer.

3 Innovation

As we noted at the start of this section, identifying and supporting customers with a mental capacity or decision making limitation during an online credit application is key as:

- these customers are already online
- being an online customer does not remove the risk of potential detriment
- CONC applies to all lending channels – face-to-face, telephony, written, and online
- lenders already have data which can help identify and support these customers
- lenders already act on some of these data to identify and support customers
- the technical, regulatory, and practical conditions exist to take innovative action.

What is now needed is this action.

Given that nearly half of all UK customers purchasing a bank product in the last year did so online², such online lending has become the norm for many.

Action is therefore required on online lending and mental capacity to ensure that the fair treatment of all customers keeps step with the growing pace of technological and financial innovation.

Summary: 'what about...?' questions

This section has aimed to start a wider debate on how online lending platforms can address the issue of customers with serious decision-making difficulties.

In the debates that will hopefully follow, the simple framework outlined in this section can provide a starting point on which to build, rebuild, and improve current provision.

During this, it is inevitable that queries and concerns will be raised. Many of these – often taking the form of 'what about...?' questions – will seek clarification on what is practically and technically possible.

These will undoubtedly contain reference to what is possible in terms of 'real-time' monitoring and responses, or the extent of data that is held about customer action during online applications.

These questions may touch on whether such monitoring is only for new customers (who are unknown to a lender and therefore often have to complete fuller online applications), or whether data already held about existing customers (including previous episodes of mental incapacity) might also be drawn upon.

The debate may also raise questions about the commercially acceptable rate of 'false positives' (where a customer is identified as having a potential decision-making limitation, when that isn't actually the case), and what applicants and customers might perceive as acceptable too.

However, the posing of such questions should not be seen as a reason not to take action.

Instead, such questions are part of a wider process of defining the problem, and finding a way forward that is realistic from a customer, commercial, and regulatory perspective.

Consequently, this guide welcomes these questions, and invites lenders to both query and critique the framework outlined in this section – only by doing this we will be able to make progress.

9 What other tools can lenders use?

In addition to this guide, lenders can draw on a range of other tools contained in our 'sister guide': *Vulnerability: a guide for debt collection – 21 questions, 21 steps*. www.pfrc.bris.ac.uk

These provide practical resources for **benchmarking** staff performance (and comparing this against the dataset presented in the 21 steps report), **handling disclosures** of a decision-making limitation (legally and effectively), better **understanding** a customer's situation, **breaking bad news** to customers (such as declined credit applications), handling **emotional and suicidal** customers, and improving **training** and **quality assurance** programmes.

21 STEPS report	<ul style="list-style-type: none"> Firms can also run a 'vulnerability and credit provision benchmark' survey with their staff – overseen by PFRC at Bristol University, this provides firms with a bespoke report highlighting a lender's strengths and areas for improvement, and comparing their performance against the aggregated data-set presented in this guide. Firms can obtain their own benchmark survey reports on debt collection and/or credit provision – please contact PFRC on jamie.evans@bristol.ac.uk or christopher.fitch@bristol.ac.uk for more details 	Step 1 Page 16
TEXAS	<ul style="list-style-type: none"> Introduced in 2010, TEXAS arguably now represents an industry-standard tool for handling disclosures not only of mental health problems, but a wide range of vulnerable situations. Ninety-three percent of the organisations participating in our 2016 debt collection survey reported that they used TEXAS to handle disclosures. TEXAS stands for Thank, Explain, eXplicit consent, Ask (questions), and Signpost. 	Step 4 Page 25
IDEA	<ul style="list-style-type: none"> Published in 2015, IDEA was developed to help staff understand more about a customer's vulnerable situation, and to complement the initial disclosure management tool of TEXAS. IDEA stands for Impact, Duration, Experience, and Assistance. 	Step 6 Page 30
SPIDER	<ul style="list-style-type: none"> SPIDER aims to remind staff about the different steps involved in 'breaking bad news' to customers in difficult situations. SPIDER stands for Set (the scene), Perspective (what is known), Invitation (what is needed), Deliver (the information), Empathise (with response), and Recap (the discussion). 	Step 10 Page 43
BLAKE	<ul style="list-style-type: none"> BLAKE aims to help staff to effectively respond to customer disclosures of suicidal thoughts or intentions, and to involve internal specialists and external agencies where needed. BLAKE stands for Breathe (to focus), Listen (to understand), Ask (to discover), KeeP safe (from harm), and End (with summary). It aims to give staff a framework to respond to an issue that many find foreboding. 	Step 13 Page 58
Training and quality	<ul style="list-style-type: none"> Established tools and new protocols, however, are only one way of addressing vulnerability. As our 21 Steps briefing contends, developing effective training is key – but this needs to go beyond high-level principles and 'awareness raising', and deal with the tasks that staff encounter day-in-day-out. In addition, improving quality assurance systems, and supporting the people who run these, is also vital – without this, it is not possible to improve the quality of responses to vulnerability across an entire workforce. 	Steps 18 and 19 Pages 80 and 83

An aerial photograph of a desert landscape, likely a salt flat or a similar mineral-rich terrain. The ground is covered in intricate, concentric, and irregular patterns of light and dark brown and tan colors, suggesting different mineral compositions or erosion patterns. A thin, light-colored grid is overlaid on the image, particularly visible in the upper right quadrant. A large, solid purple rectangular box is positioned in the upper left and center of the image, containing the word "REFLECTION" in white, bold, uppercase letters.

REFLECTION

Conclusion

This guide has focused on credit applications, and how customers in vulnerable situations can be better identified and supported.

Presenting new data, practical tools, and staff insights, the guide has aimed to improve current practice, and inform thinking about future activity.

To assist with this latter activity, three core developments need to accompany the practices that lenders are putting into place.

Firstly, lenders should share the BRUCE protocol with staff who have face-to-face or telephone contact with customers.

BRUCE has been designed to remind staff of the key elements of decision-making, and to help better identify and support customers with a decision-making limitation.

In doing this, firms will be able to better demonstrate their practice with the recommendations of the FCA's regulatory guidance on mental capacity.

Secondly, in terms of intermediated credit, lenders, brokers, and other agents may benefit from further specific guidance.

While BRUCE and other techniques can be practically used by lenders and agents, some firms report that further and more specific guidance for intermediated credit is required.

This would address the practical challenges that intermediated credit faces on these issues of vulnerability, mental capacity limitations, and decision-making difficulties.

Thirdly, in terms of online lending, firms should consider how to support and identify customers with decision-making limitations.

This will involve lenders evaluating what data are collected about a customer's actions during an online application, and whether these data can tell us anything about any potential difficulties with understanding, memory, weighing-up, or communication.

Undertaking such a review will help lenders to think about how they can demonstrate alignment of their activity with the recommendations within CONC.

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Appendix 1

the sources

- We ran an **online survey with staff who directly handled credit applications from customers** (either via telephony or face-to-face). These staff were selected from a sample of creditor firms who provided consumer credit or mortgage loans. Each member of staff was asked about their experience of working with customers in vulnerable situations, including those with mental capacity limitations.
- We undertook **qualitative interviews on intermediated credit** with lenders, and **ran a roundtable discussion** with lenders and brokers.
- We also drew on **wider discussions with lenders on online lending and vulnerability** (led by Chris Fitch and the Money Advice Trust) – these discussions focused on identifying (and supporting) customers with decision-making limitations during online credit applications.

the samples

- The **online study** aimed to produce a representative description of practice in UK credit provision – to achieve this, we surveyed a total of 1,666 staff (n=1524 frontline staff, and n=142 specialist staff) who were randomly selected from a sample of 18 organisations that provide unsecured and secured credit to UK consumers. These 18 firms were themselves sampled from a larger population of organisations (see below). In each organisation, where we could not involve all staff involved in credit applications, we took a random sample of staff.
- **Interviews on intermediated credit** were held with 10 lenders. While attempts were made to interview brokers, this was not possible. We therefore held a roundtable event on the issue of vulnerability and mental capacity with 30 lenders and brokers.
- Discussions were held with lenders about online lending applications.

the organisations

- For the **online survey**, we took a random stratified sample of organisations. We worked with a number of trade organisations to develop a sampling frame of credit provision organisations. To ensure a balanced sample, different categories were created within this sampling frame: based on the size of organisation (small, medium, large, and very large), again using data supplied by trade membership bodies. Within each category, we then randomly ordered each organisation for selection, and organisations were then approached in that order to participate in the survey.
- For the **qualitative interviews**, the Finance & Leasing Association provided a list of members that provide credit to customers via brokers or other intermediaries. The organisations on this list were categorised based on both their market share and the type of market they serve (motor finance, retail finance, mortgages). As with the online survey, these organisations were then randomly ordered within each category and invited in this order to participate in the interviews, attempting to gather an even split across the range of types and sizes of organisation. With the aim of obtaining a sample of brokers and other intermediaries, we asked the providers of intermediated credit that we spoke to if they were willing to introduce us to brokers and intermediaries. While these introductions were made, we were not able to interview any intermediaries directly, so we (with the FLA) a roundtable on intermediated credit, vulnerability, and mental capacity.
- For the work on **online lending**, we spoke anonymously to a range of creditor organisations with an interest in online lending.

the participants

- For the **online survey**, a number of organisations agreed to participate – some of these invited all their staff to participate, while in other organisations, we took a random sample of staff to approach. The decision of which option to take was typically due to operational considerations or resource constraints. Staff were then approached to participate (with the decision being entirely theirs – organisations were not allowed to tell staff that the survey was mandatory).
- For the **qualitative interviews**, we spoke to members of staff who were responsible for their organisation's policies and practices in relation to working with intermediaries to support vulnerable customers.

the analysis

- For the **online survey**, following data collection, results were weighted to correct for the fact that some firms had taken a sample approach, while others had surveyed all their staff. The aggregated results were then analysed and presented to participating organisations, frontline staff, industry experts and other stakeholders at a problem-solving workshop and roundtable event.
- For the **qualitative interviews**, thematic and deviant case analysis was conducted to identify common and practically important themes.

the outputs

- In addition to this guide, each firm in the study was provided with a bespoke report – this presented the findings for that organisation (anonymised so that individual respondents could not be identified), alongside comparisons to overall 'industry averages' based on the aggregated data-set.

