

# Mental capacity, mental health and other decision-making limitations toolkit

---

A front line toolkit that builds understanding and brings to life approaches that can be used to aid consistent and fair treatment for customers with decision-making limitations.

---

# Introduction

## Why a frontline toolkit?

Knowing how to act and what to do when faced with a customer who might have mental health decision-making, mental capacity or other limitations and need additional support can feel daunting for front line staff.

The front line toolkit provide firms with information that will help build understanding and capability, and support consistent and fair treatment of customers. Customers can experience decision-making difficulties at any point in the customer journey which may affect their ability to make simple or complex decisions. The toolkit introduces an outline approach that can be shaped to reflect individual firm policy, practice and culture.

The toolkit draws on regulatory guidance and best practice as well as the legal frameworks that surround mental capacity.

---

## Everyday help and support for customers

Recognising when a customer might be experiencing difficulty with decision making is key to providing the help and support they need.

Knowledge, as well as an understanding of the types of situations where difficulties with decision making might surface, can make spotting the signs easier.

Here are some of the things you can do:

- respond with empathy
- take a step by step approach to providing reasonable support which is flexible and personal
- consider using practical tools to help you recognise when additional help and support is needed, and shape your conversation with the customer
- refer to local processes, and use escalation points for additional guidance

## Using the toolkit

The toolkit is intended for use by front line colleagues to build understanding and signpost the approaches that can be adopted in real time to support customers.

It can be tailored by individual firms to include local policies and processes including how information is recorded, escalation criteria and internal and external signposting.

The toolkit doesn't replace the need for logical thinking and judgement to be used.

To make using the toolkit easier, individual sections can be accessed directly by pressing hyperlinks from the contents page or pressing the individual tabs to reveal relevant information quickly.



Home



Back

# Principles

---

- 1.** Always assume a customer has the mental capacity to make the decision in question, unless you know or have been told otherwise.
- 2.** If you know or reasonably suspect that someone doesn't have the capacity to make the decision, put in place **extra help** and **support** so they are able to continue to either make their own decisions or **maximise their participation** (this includes but is not restricted to providing information in a simple and straightforward way, and offering the opportunity to return at a later date).
- 3.** The decision is for the customer to make – sometimes they might make an unwise decision. This doesn't, in isolation, mean that they lack capacity.
- 4.** Try and avoid guessing what is wrong with the customer, instead focus on the decision-making difficulties they experience and how you can help and support them to overcome these. Don't assume that living with mental health problems, a learning disability or being unable to converse means that someone automatically lacks capacity.
- 5.** If you have exhausted practicable help and support options and remain concerned that a customer lacks the capacity to make a specific decision at a point in time, local processes and escalation criteria apply.

# What does the customer want to do?

A front line toolkit that helps build understanding and brings to life approaches that can be used to aid consistent and fair treatment for customers with decision-making limitations.

## Tools

To help you identify and support customers who experience limitations with everyday decision making or more complex decisions

Open a standard or additional account

Borrow money or take out a credit product

Amend their account or product in some way

### BRUCE

to establish decision-making capacity

Transact or service their account

End relationship with firm

Discuss money worries

### TEXAS

when a customer shares information

### CARERS

when a third party tells us something about a customer

## Customer needs change

Customer experiences a life event or change in circumstances

Customer experiences a change in mental capacity

Customer requires support

### IDEA

to navigate conversations

Third party advises the customer has lack of capacity or has concerns

Account or product declined

Customer ends relationship with firm

### SPIDER

for breaking bad news

### OTHER

link to other tools available, for example on company intranet



Home



Back

# Customer wants to open a standard or additional account

---

## Things to consider:

Is the customer able to understand the information relevant to the decision, do they know what they want to do?

Are they able to retain the information for long enough to make the decision?

Is the customer able to use the information provided as part of making the decision?

Are they able to communicate their decision?

Has the customer disclosed any new information about their ability to make a decision?

---

## If no, have you taken all practicable steps to enable the customer to make the decision, for example:

Have you provided the information needed to make the decision in a clear and straightforward way?

Have you provided the customer with additional time to consider the information given?

Have you spoken to the customer about support from friends or family to help make a decision?

Can the decision be delayed, allowing the customer to return at a time when decision making might be easier?

## Tools

---

To help you identify and support customers who experience limitations with everyday decision making or more complex decisions

---

### BRUCE

to establish decision-making capacity

### TEXAS

when a customer shares information



Home



Back

# Customer wants to borrow money or take out a credit product

---

## Things to consider:

Is the customer able to understand the information that is relevant to the decision? Notice their behaviours as well as listen to what they say.

Are they able to retain the key information (including the details of the product and the repayments) for long enough to make the decision?

Is the customer able to use (weigh up) the information provided as part of making the decision?

---

## If no, have you taken all practicable steps to enable the customer to make the decision, for example:

Have you provided the information needed to make the decision in a clear and straightforward way?

Are there real-life examples that can be used to aid understanding or context, including explaining some of the consequences of failing to meet the repayments?

Ask the customer to clarify what information they have understood, and focus attention on filling gaps.

Have you provided the customer with additional time to consider the information given?

Can the decision be delayed, allowing the customer to return at a time when decision making might be easier?

*If after providing help and support, the customer remains unable to demonstrate that they have understood the key details of credit products including the type of product and the terms of repayment (overall and instalments) or you remain concerned, refer to local processes and escalation criteria.*

## Tools

---

To help you identify and support customers who experience limitations with everyday decision making or more complex decisions

---

### BRUCE

to establish decision-making capacity

### IDEA

to navigate conversations

### SPIDER

for breaking bad news

### OTHER

link to other tools available, for example on company intranet



Home



Back

# Customer wants to amend their account or product in some way

---

## Things to consider:

Is the customer able to understand the information relevant to the decision, including the intended and unintended consequences of their request to amend details or a feature related to their account?

Are the customer's questions relevant and applicable?

Is the customer able to repeat back or summarise the information provided?

Are they able to tell you their decision?

---

## If no, have you taken all practicable steps to enable the customer to make the decision, for example:

Where there are gaps in understanding, clarify what information might make decision making easier.

Have you kept information simple and concise?

Have you provided the customer with additional time to consider the information given?

Have you checked with the customer if there is someone who supports them that might be able to accompany them at a future date?

---

**If the request is unusual or out of character, try and explore the circumstances leading to the request.**

## Tools

---

To help you identify and support customers who experience limitations with everyday decision making or more complex decisions

---

### BRUCE

to establish decision-making capacity

### TEXAS

when a customer shares information



Home



Back

# Customer wants to transact or service their account

---

## Things to consider:

Is the request the customer is making, a usual or unusual transaction?

If the transaction is **unusual**, is there anything you notice about the customer's **behaviour** or what they are saying that gives any indication of a decision-making limitation?

How does the customer respond to you exploring the reasons for the transaction and do the answers to your questions seem plausible?

---

## If no, have you taken all practicable steps to enable the customer to make the decision, for example:

Have you provided the information needed to make the decision in a clear and straightforward way?

Have you provided the customer with additional time to consider the information given?

---

**Consider additional sources of support for customers. [See customer requires support.](#)**

## Tools

---

To help you identify and support customers who experience limitations with everyday decision making or more complex decisions

---

### OTHER

link to other tools available, for example on company intranet



Home



Back

# Customer ends relationship with firm

---

## Things to consider:

Who is requesting the account or product closure?

Does the request feel unusual or out of character?

What method of withdrawal of funds has been requested?

Are there any third party or Power of Attorney markers or flags on the account?

Are there arrangements in place to enable essential outgoings to be paid or benefits (universal credit) to be paid?

Staff are advised to be vigilant about these types of activities.

---

**Validating the decision. See [understanding mental capacity](#).**

## Tools

---

To help you identify and support customers who experience limitations with everyday decision making or more complex decisions

---

### BRUCE

to establish decision-making capacity

### CARERS

when a third party tells us something about a customer

### OTHER

link to other tools available, for example on company intranet



Home



Back

# Customer wants to discuss money worries

---

## Things to consider:

Does the customer have multiple financial products they are concerned about? Do they know which ones to prioritise?

Is the customer able to understand the options available to them? Do they understand the consequences of these, for example the potential impact on their credit file?

Are they receiving specialist help to support their decision making? Would they benefit from professional advice, such as a debt charity offeribg free help?

Is the customer able to understand the information relevant to the decision they need to take?

Are they able to communicate their decision?

---

## If no, have you taken all practicable steps to enable the customer to make the decision, for example:

Have you provided the information needed to make the decision in a clear and straightforward way, or a format they understand?

Have you given them time to consider their options?

Are they getting the support they need to make a decision? If not, should you be signposting them elsewhere for additional support?

Are you meeting the regulatory and industries best practice requirements for dealing fairly with a customer with payment shortfalls (if relevant)?

---

## Additional support:

Check with your local policies and procedures as to any specific recommendations as to what to do in these circumstances.

Consider signposting to other internal sources of additional support.

Consider whether external signposting would be helpful.

## Tools

---

To help you identify and support customers who experience limitations with everyday decision making or more complex decisions

---

### BRUCE

to establish decision-making capacity

### TEXAS

when a customer shares information

### IDEA

to navigate conversations

### SPIDER

for breaking bad news

### OTHER

link to other tools available, for example on company intranet



Home



Back

# Customer experiences life event or change in circumstances

---

## Things to consider:

Is the customer able to understand the information relevant to the decision they want or need to take?

Are they able to retain the information for long enough to make the decision?

Is the customer able to use the information provided as part of making the decision?

Are they able to communicate their decision?

---

## If no, have you taken all practicable steps to enable the customer to make the decision, for example:

Have you provided the information needed to make the decision in a clear and straightforward way?

Have you provided the customer with additional time to consider the information given?

Have you checked with the customer whether there is someone who can support them or who they might want to act on their behalf?

---

## Additional support:

Consider signposting to other internal sources of additional support.

Consider whether external signposting would be helpful.

## Tools

---

To help you identify and support customers who experience limitations with everyday decision making or more complex decisions

---

### BRUCE

to establish  
decision-making  
capacity

### TEXAS

when a customer  
shares information

### IDEA

to navigate  
conversations

### OTHER

link to other tools  
available, for example on  
company intranet



Home



Back

# Customer experiences a change in mental capacity

---

## Things to consider:

Does it appear the customer's **state of mind** and understanding is changing?

Does the customer appear uncertain or confused, not able to follow the conversation and is asking the same questions repeatedly and/or giving conflicting information?

Is the customer able to convey basic personal information and provide relevant answers?

Is the customer expressing **difficulty considering options** available to them? Do they keep changing their mind, without giving a reason?

## If yes, have you taken all practicable steps to support the customer, for example:

Have you checked with the customer if there is someone who supports them? If yes, provide an option for them to return with them.

Consider the involvement of a partner, family member or a third party, to support the customer.

[See understanding mental capacity](#)

## Tools

---

To help you identify and support customers who experience limitations with everyday decision making or more complex decisions

---

### BRUCE

to establish decision-making capacity

### CARERS

when a third party tells us something about a customer

### OTHER

link to other tools available, for example on company intranet



Home



Back

# Customer requires support

---

## Things to consider:

In some cases, customers with mental capacity limitations may be able to be independent and not require delegated access. Delegated access is not always the first or best solution – other ways of providing help and support should be explored.

Does the carer have the authority to act on the customer's account i.e. are they a designated representative, for example with a Power of Attorney or do they have a Court of Protection order?

If they do not have the authority, avoid discussing account details. However, reassure them that their concerns can still be recorded and will need to be shared with the customer.

Record the carer's observations ensuring you have checked why the customer is unable to speak for themselves.

Where possible, involve the customer in the conversations.

Consider signposting to internal or external sources of support in line with local processes.

---

## Additional sources of support for customers

There are numerous source of additional help and support that customers can access. This includes but is not restricted to:

- Citizens Advice Bureau
- Pay your way ([www.payyourway.org.uk](http://www.payyourway.org.uk)) helps customers build their understanding on different payment options available to them
- Mencap ([www.mencap.org.uk/learning-disability-explained/communicating-people-learning-disability](http://www.mencap.org.uk/learning-disability-explained/communicating-people-learning-disability))
- Stroke Association
- Alheimers Society
- Mind

## Tools

---

To help you identify and support customers who experience limitations with everyday decision making or more complex decisions

---

### TEXAS

when a customer shares information

### CARERS

when a third party tells us something about a customer

### OTHER

link to other tools available, for example on company intranet



Home



Back

# Third party advises that the customer has lack of capacity or has concerns about the customer

---

## Things to consider:

Who is telling you information or letting you know the concerns?

Does the customer know that this information is being shared?

Are they a designated representative, for example with a Power of Attorney?

Does the information they are sharing match with your own observations or does it conflict?

Is the information they are providing evidence based? If yes, is the evidence underpinning their concerns available?

Is the problem thought to be long or short term?

Is the customer able to maintain the product / account in the short term? Is this likely to be at risk of changing over time?

---

**Support is required. See customer requires support.**

---

## Is the customer being scammed?

If you believe the customer is being scammed, you must intervene. Check your internal procedures.

## Tools

---

To help you identify and support customers who experience limitations with everyday decision making or more complex decisions

---

### CARERS

when a third party tells us something about a customer

### OTHER

link to other tools available, for example on company intranet



Home



Back

# Account or product declined

---

There may be occasions where it isn't possible to provide the customer with the answer or outcome they want.

The decision may surprise the customer, so hearing the answer 'no' will feel not only disappointing but difficult.

## Things to consider:

How will or might the customer react to the decision?

How to approach the conversation – including setting the scene.

Where to have the conversation and how much time you will need.

Use simple and straightforward language and break the information into chunks - making it as easy as possible for the customer to understand.

Check understanding and give time for the customer to make sense of the decision.

Does the customer understand the implications of the answer?

Has the decision put the customer in a worse situation, is exploring other products that might be more suitable an option?

Is there someone who is able to support the customer and be able to remind the customer of the decision once they leave?

## Tools

---

To help you identify and support customers who experience limitations with everyday decision making or more complex decisions

---

**SPIDER**  
for breaking  
bad news

**OTHER**  
link to other tools  
available, for example on  
company intranet



Home



Back

# Understanding mental capacity

## 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 communicate that decision

## Why is this important?

If a customer has a mental limitation their ability to make decisions might be impaired. This could mean that decisions are taken without understanding the consequences.

This is especially important with lending decisions where a lack of understanding or recall can result in customer detriment, including default and financial difficulties.

What causes a mental capacity limitation?

Is a mental capacity limitation permanent?

Does it affect all decisions?

## What causes a mental capacity limitation?

There are lots of reasons why a customer might experience difficulty making a specific decision at a particular point in time, including:

- an underlying mental health issue
- a learning disability
- dementia
- developmental disorders
- medication or side effects of treatment
- substance misuse such as drug or alcohol
- a life event causing an emotional impact or a distraction of focus

Other factors that might impact decision making include the level at which English is understood, and literacy or numeracy levels.

---

## Is a mental capacity limitation permanent?

A customer's ability to make a decision (mental capacity) may fluctuate over time.

There are exceptions to this, but an assumption that a customer will always lack mental capacity just because they have on a previous occasion should be avoided.

---

## Does it affect all decisions?

**No** – a customer who lacks the capacity to make one decision (a decision to take out a new product or extend credit) may still be able to make other decisions (such as paying a bill or withdrawing cash for everyday spending).

Customers are also allowed to make unwise decisions.

## What does the law say?

There are three Mental Capacity Acts across the four UK countries that provide a framework for acting and making decisions about individuals who lack capacity.

The Acts do not primarily relate to lending but provide definitions as well as statutory tests.

### The statutory principles say:

- 1.** A person should be presumed to have capacity unless it is shown that they don't
- 2.** A person should not be presumed to lack capacity unless all practicable steps have been taken to help them do so
- 3.** A person should not be judged as being unable to make a decision because they make an unwise decision
- 4.** A decision for another person must be made in their best interests
- 5.** Where a decision needs to be made on behalf of another, consideration should be given as to whether there is a least restrictive option

The Act introduces a two-stage test to determine if a person lacks capacity to make a decision, and asks key questions about understanding, remembering, weighing up and communicating.

The definitions are reflected in the FCA's Consumer Credit Sourcebook (CONC) which provides overarching guidance for financial firms.

CONC applies across the UK and also reflects common law, and translates the various requirements into practical guidance.

# BRUCE to establish decision-making capacity

---

**Behaviour and talk:** look out for or monitor a customer's behaviour for signs that they are experiencing difficulties with:

**Remembering:** is the customer experiencing 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 and decisions about what they want to do?

**Evaluating:** can the customer weigh up the different options open to them?

---

## Tools

---

To help you identify and support customers who experience limitations with everyday decision making or more complex decisions

---

### TEXAS

when a customer shares information

### CARERS

when a third party tells us something about a customer

### IDEA

to navigate conversations

### SPIDER

for breaking bad news

### OTHER

link to other tools available, for example on company intranet



Home



Back

# TEXAS when a customer shares information with us

---

**Thank** the customer for giving you the information

**Explain** how the information will be used

**EXplicit** consent should be obtained

**Ask** questions to establish key information

**Signpost** to the most appropriate internal or external help

---

## Tools

---

To help you identify and support customers who experience limitations with everyday decision making or more complex decisions

---

### BRUCE

to establish decision-making capacity

### CARERS

when a third party tells us something about a customer

### IDEA

to navigate conversations

### SPIDER

for breaking bad news

### OTHER

link to other tools available, for example on company intranet



Home



Back

# CARERS when a third party tells us something about a customer

---

**Check** for authority. If the carer has evidence of their authority to act, a more detailed conversation can be arranged. If they don't but need to share information about the customer?

**Avoid** discussing account details, making sure to explain to the carer why this isn't possible.

**Reassure** the carer that their concerns may still be able to be recorded as observations unverified and can be looked into.

**Explain** to the carer that their observations will need to be shared with the customer and colleagues (gain consent for this).

**Record** the carer's observations, ensuring you have checked why the customer is unable to speak for themselves.

**Summarise** any next steps, which might include speaking with the customer.

---

## Tools

---

To help you identify and support customers who experience limitations with everyday decision making or more complex decisions

---

### BRUCE

to establish decision-making capacity

### TEXAS

when a customer shares information

### IDEA

to navigate conversations

### SPIDER

for breaking bad news

### OTHER

link to other tools available, for example on company intranet



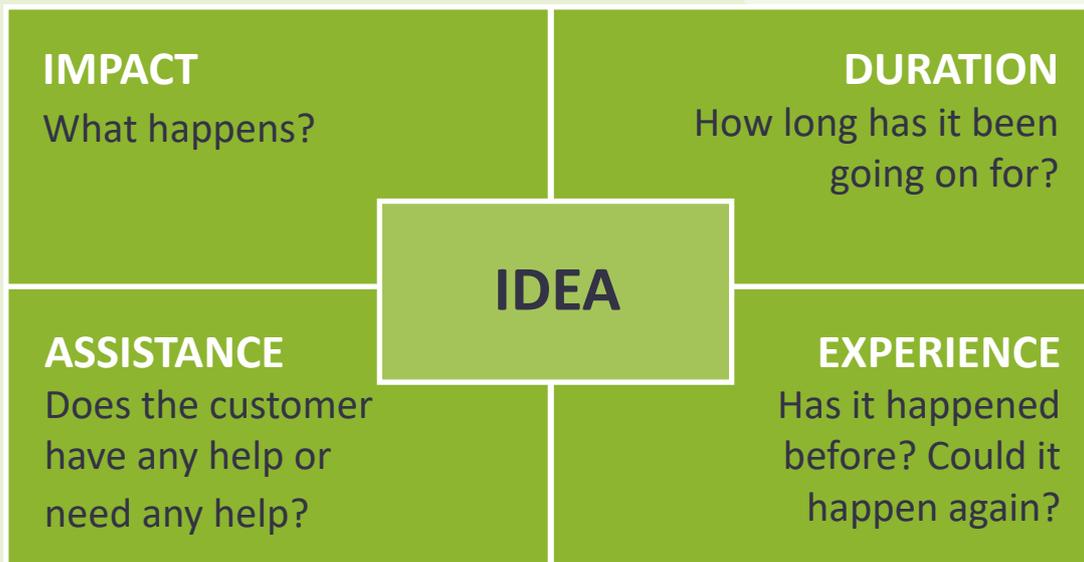
Home



Back

# IDEA to navigate conversations and explore how situations may impact customers

---



## Tools

---

To help you identify and support customers who experience limitations with everyday decision making or more complex decisions

---

### BRUCE

to establish decision-making capacity

### TEXAS

when a customer shares information

### CARERS

when a third party tells us something about a customer

### SPIDER

for breaking bad news

### OTHER

link to other tools available, for example on company intranet



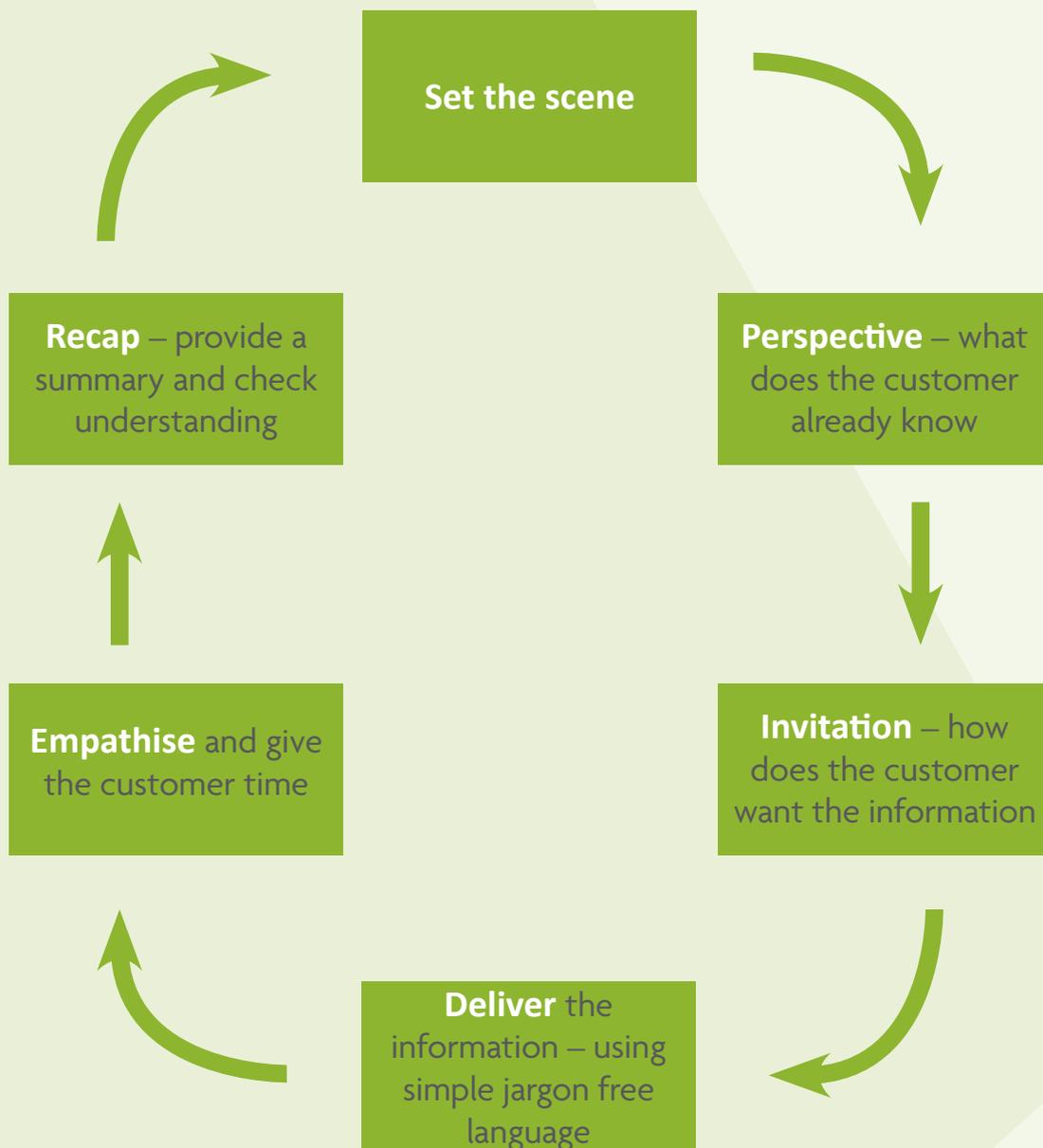
Home



Back

# SPIDER for breaking bad news

---



## Tools

---

To help you identify and support customers who experience limitations with everyday decision making or more complex decisions

---

### BRUCE

to establish decision-making capacity

### TEXAS

when a customer shares information

### CARERS

when a third party tells us something about a customer

### IDEA

to navigate conversations

### OTHER

link to other tools available, for example on company intranet



Home



Back

# KEY SOURCES

Alzheimer's Society. (2018). Dementia-friendly business guide . Retrieved from <https://www.alzheimers.org.uk/get-involved/dementia-friendly-communities/making-organisations-dementia-friendly/businesses>

Alzheimer's Society. (2013). Dementia-friendly financial services. England: Alzheimer's Society.

Crown. (1995). Disability Discrimination Act 1995. Retrieved from <http://www.legislation.gov.uk/ukpga/1995/50/contents>

Crown. (2005). Mental Capacity Act. London: The Stationery Office Limited.

Crown. (2010). Equality Act 2010. Retrieved from <https://www.legislation.gov.uk/ukpga/2010/15/contents>

Crown. (April 2007). Code of Practice. UK: The Stationery Office on behalf of the Department for Constitutional Affairs.

Empowerment Matters. (n.d.). MAKING FINANCIAL DECISIONS. Merseyside: Empowerment Matters.

Financial Conduct Authority. (2014, April 1). CONC 7.10 Treatment of customers with mental capacity limitations. Retrieved from <https://www.handbook.fca.org.uk/handbook/CONC/7/10.html>

Financial Conduct Authority. (2018). CONC 2.10 Mental capacity guidance. London: FCA.

Financial Conduct Authority. MCOB 13 Arrears and Repossessions. London: FCA. Retrieved from <https://www.handbook.fca.org.uk/handbook/MCOB/13/?view=chapter>

Fitch, C. (June 2017). Vulnerability: a guide for lending. Bristol: Personal Finance Research Centre, University of Bristol.

Fitch, C. (March 2017). Vulnerability: a guide for debt collection. Bristol: Personal Finance Research Centre, University of Bristol.

Government. (2015, June 16). Equality Act 2010: guidance . Retrieved from <https://www.gov.uk/guidance/equality-act-2010-guidance>

Group, M. A. (2017). DEBT AND MENTAL HEALTH EVIDENCE FORM FOR ADVISERS (ASSISTED SELF-HELP). Retrieved from <http://malg.org.uk/resources/malg-mental-health-and-debt-guidelines/debt-and-mental-health-evidence-form-for-advisers-assisted-self-help/>

Katie Evans. (May 2017). Policy Note. London: Money and Mental Health Policy Institute.

Lending Standards Board. (April 2016). STANDARDS DEVELOPMENT REVIEW CUSTOMERS IN VULNERABLE CIRCUMSTANCES. London: Lending Standards Board.

Mencap. (2008). Communicating with people with a learning disability. London: Mencap.

Money Advice Liaison Group. (2015). Good Practice Awareness Guidelines For Helping Consumers With Mental Health Conditions And Debt. MALG.

New South Wales Government. (June 2009). Capacity Toolkit. New South Wales: Attorney General's Department of NSW.

Pay Your Way. (2018). Homepage. Retrieved from Pay Your Way: <http://www.payyourway.org.uk/>

Scottish Government. (2018, March 23). Code of Practice. Retrieved from <https://www.gov.scot/Topics/Health/Services/Mental-Health/Law/Code-of-Practice>

Select Committee on the Equality Act 2010 and Disability. (2016). The Equality Act 2010: the impact on disabled people. London: House of Lords.

# Tools

To help you identify and support customers who experience limitations with everyday decision making or more complex decisions

**BRUCE**  
to establish  
decision-making  
capacity

**TEXAS**  
when a customer  
shares information

**CARERS**  
when a third party tells  
us something about a  
customer

**IDEA**  
to navigate  
conversations

**SPIDER**  
for breaking  
bad news

**OTHER**  
link to other tools  
available, for example on  
company intranet



Home



Back