Identifying and responding

to signs of diminished

mental capacity

As the human body ages, it is normal for changes in the brain to take place. These changes may not have a noticeable effect on someone’s ability to perform routine financial tasks, such as paying bills, but can become more obvious when they face more complex or unfamiliar financial decisions, such as deciding to buy or sell investments.

While issues of diminished mental capacity are often associated with aging, a loss of mental capacity can also have other causes or contributing factors, including an illness or accident. Factors impacting mental capacity may affect different individuals at different points in their life and to significantly different degrees.

## Your role

The interactions that you have with your clients, and the knowledge that you acquire through your relationship with them can place you in a unique position to identify and respond to signs of diminished mental capacity.

If you detect signs that a client lacks the mental capacity to make financial decisions, you may be able to take certain actions. For example, you may wish to contact the client’s trusted contact person (**TCP**) or, if there is a reasonable belief that the client lacks this key capacity, our firm may place a temporary hold on a purchase, sale, transfer or withdrawal. You are not expected to make a medical determination regarding a client’s mental capacity. Talk to your client about concerns that arise and document your conversations.

## Examples of warning signs that a client lacks mental capacity to make decisions involving financial matters may include:

* memory loss, such as forgetting previously given instructions or repeating questions,
* increased difficulty completing forms or understanding disclosure documents,
* increased difficulty making decisions involving financial matters or understanding key aspects of investment accounts,
* confusion or unfamiliarity with previously understood financial terms and concepts,
* reduced ability to solve everyday math problems,
* exhibiting unfamiliarity with surroundings or social settings or missing appointments,
* difficulty communicating, or difficulty expressing their will, intent or wishes, or
* increased passivity, anxiety, aggression or other changes in mood or personality, or an uncharacteristically unkempt appearance.

One sign alone may not be indicative of a client’s lack of mental capacity, and signs may arise subtly and over time. The warning signs listed above are not a complete list, and you may notice other signs that are not listed above. It is important to note that mental capacity can fluctuate over time, is contextual and depends on the type of decision to be made. You should also talk to your clients about concerns that arise and document your conversations.

When considering whether one or more warning signs that a client lacks mental capacity to make financial decisions is present, you might consider, among other things, your client’s ability to understand information that is relevant to their decision making and to appreciate the reasonably foreseeable consequences of making or failing to make a decision.

## Engage your clients in planning and protecting themselves ahead of time, proactively

People tend to avoid imagining unfavourable situations or emotions. When asked to think about the prospect of losing their cognitive abilities, many clients will be reluctant to consider the possibility that cognitive decline will affect them. Engaging clients in conversations will require a combination of skill and preparation.

* Like planning for unexpected financial and health changes, planning for possible cognitive changes can be positioned with clients as a valuable strategy for protecting their savings.
* Approaches that may help your client discuss and plan for possible diminished capacity include:
  + Acknowledging that this is a difficult and possibly uncomfortable topic.
  + Presenting the options for protecting themselves in a clear, simplified manner.
  + Informing clients about the likelihood of financial exploitation or fraud.
  + Informing clients about the steps other investors are taking to protect themselves.
  + Using real-world scenarios when discussing diminished mental capacity or financial exploitation.
  + Making the client feel that by overcoming reluctance to discuss a difficult topic and planning for possible losses of capacity, they are doing what other prudent and risk-aware clients do.
  + Positioning it as a means for your client to maintain control.
  + Linking it to enabling your client to achieve their financial goals even in the event of a loss of decision-making ability.

## Tips for identifying and responding to diminished mental capacity

* Familiarize yourself with some of the warning signs of diminished capacity. Share this knowledge with your client.
* Talk to your clients about the potential for cognitive decline and how they would want you to proceed, and whether they have a power of attorney (POA) in place. Document your conversations.
* If your client has appointed an attorney under a power of attorney, ask them to provide you with a copy of the documentation and ensure that it is kept up to date. For more information on how [FIRM] handles powers of attorney, see [FIRM POLICY].
* Develop a habit of observing and regularly documenting your client’s decision-making style, approach to investing, and understanding of financial concepts. Note areas of inconsistency. This can help you identify future changes.
* Understand the relationships your clients have with friends, family and other professionals, such as lawyers or accountants.
* Take steps to obtain the name and contact information of a TCP from your client, as well as their consent for this individual to be contacted if you become concerned that the client is experiencing financial exploitation or is experiencing diminished capacity.
* In accordance with client consent, you may consider contacting a TCP:
  + if you notice signs of financial exploitation;
  + if the client exhibits signs that they lack mental capacity to make decisions involving financial matters;
  + to confirm the client’s contact information if you are unsuccessful in contacting the client after repeated attempts and where failure to contact the client would be unusual; or
  + to confirm the name and contact information of a legal guardian, executor, trustee, an attorney under a power of attorney or any other legal representative.
* More information about TCPs can be found in [FIRM POLICY].
* Individuals experiencing diminished mental capacity may be at greater risk of financial exploitation. Ensure you are familiar with our protocols for escalating concerns about financial exploitation and abuse, [which include protocols for contacting law enforcement, provincial seniors advocate offices or the provincial Office of the Public Guardian and Trustee].
* If our firm has a reasonable belief that financial exploitation of a vulnerable client has occurred, is occurring, has been attempted or will be attempted, or a client has lost the mental capacity to make decisions regarding financial matters, we may be able to place a temporary hold on a transaction, transfer or withdrawal. Review [FIRM POLICY] for important steps to follow and who to contact.

## [FIRM] has policies and procedures available to assist you in responding to diminished capacity, including:

[*List of relevant policies, procedures and contacts at your firm. You may wish to review* [*CSA Staff Notice 31-354 Suggested Practices for Engaging with Older or Vulnerable Clients*](https://www.osc.ca/documents/en/Securities-Category3/csa_20190621_31-354_suggested-practices-for-engaging-with-older-or-vulnerable-clients.pdf) *for examples of policies and procedures that address relevant topics, such as handling of powers of attorney and limited trading authorizations, communicating with older or vulnerable clients, and identifying trusted contact person.*]