

Protecting vulnerable customers from potential financial abuse

This industry guideline does not have legal force or prescribe binding obligations on individual banks. While the ABA's industry guidelines are voluntary, this industry guideline has been developed with input from, and agreed to by, member banks. The ABA encourages member banks to follow this industry guideline and incorporate it into their internal processes, procedures and policies.

Purpose of the industry guideline

This industry guideline:

- Explains what financial abuse can look like and how it can impact customers and bank's relationships with their customers; and
- Outlines a framework for banks to raise awareness and promote consistent arrangements to deal with suspected cases of financial abuse.

This industry guideline provides guidance for banks. However, customers and other interested parties may find this industry guideline provides them with useful information about how banks approach dealing with financial abuse and assist them when dealing with banks.

What is financial abuse?

Financial abuse is a serious issue with far-reaching consequences for customers, their families and the community. It occurs when someone misuses money, financial resources, or property or assets without the owner's knowledge or consent.

Financial abuse can happen to anyone, but some people may be at greater risk, including older Australians, people with a disability, people with a mental illness or experiencing emotional challenges, or people who are socially isolated. However, it can also happen to people who are in good health – sometimes a person does not even realise they are being financially abused.

Financial abuse can take many forms and it usually consists of a number of actions over a period of time, rather than a single event.

Financial abuse is sometimes combined with other forms of abuse and neglect. It may include the following:

- Stealing, taking or 'borrowing' a vulnerable person's money, debit or credit cards, possessions or property without their knowledge or consent (and with no intent to return the valuables or pay back the money)
- Forging a vulnerable person's signature, forcing them to sign a document or misleading them about what they are signing, including blank withdrawal forms
- Using a vulnerable person's money for purposes other than what the person wanted
- Cashing a vulnerable person's cheque without permission or authorisation, or withholding portions of the funds
- Deceiving, coercing or unduly influencing a vulnerable person to sign a will, deed, contract or power of attorney

- Pressuring, tricking or threatening a person to make changes to their will, power of attorney or other legal arrangements
- Using a power of attorney in a way that is not in the interests of the donor or for direct personal gain (e.g. taking money from their account to pay for personal bills)
- Pressuring a vulnerable customer into being a guarantor when they lack sufficient knowledge about the transaction or the capacity to make informed decisions
- Transferring real estate or acquiring joint property without thoroughly considering how this would impact the other person
- Attempting to manage a competent person's finances without their permission or legal authority such as trying to stop them from spending their money on what they want
- Pressuring a vulnerable person to take out a loan or a product so they can personally benefit without taking on the risk (e.g. having a vulnerable person take out a mortgage, a shared equity loan, a reverse mortgage, or invest in 'too good to be true' investments)
- Providing an unnecessary or unaffordable loan to someone, resulting in detriment or potential detriment to them and benefits to the lender (known as predatory lending)
- Pressuring a person to engage in financial scams through door-to-door sales, over the phone, via email or the Internet
- Failing to provide agreed-upon and paid for services to a vulnerable person, such as care giving, home or vehicle repair or financial management – or charging an unreasonable amount for these services
- Requiring a vulnerable customer to pay for their expenses (e.g. someone shares a home with them and does not contribute to bills, maintenance and other expenses).

Background

Recognising potential financial abuse

When someone is financially exploiting a vulnerable customer, it is challenging for banks to know what to do. Every customer's situation is unique and banks are obliged to both protect their customer's privacy and not intrude into their lives. Intervening in a customer's financial matters or questioning them without due consideration and sensitivity may embarrass the customer, and possibly damage the bank's relationship with their customer. In cases of suspected financial abuse, it is important to be vigilant and cautious.

Protecting vulnerable customers and helping them protect themselves is important and banks are committed to exploring this further. To do this, banks should look for signs that could indicate a customer is being financially abused. These include when a customer:

- Withdraws a large or unusual amount of cash while accompanied by a new acquaintance
- Appears to be coerced into making transactions by a family member, friend or other person
- Remains silent while another party does all the talking (particularly in combination with either of the two above situations)
- Appears withdrawn and fearful (particularly of the person accompanying them)
- Does not understand or is not aware of recently completed transactions
- Gives implausible explanations or is confused about what they are doing with their money
- Makes unusual, erratic or uncharacteristic transactions, such as sudden withdrawals from multiple branches or banking channels within a short space of time
- Appears to make transactions they would not be capable of doing, such as using an ATM or debit card despite being housebound or in hospital (assuming this is known to the bank)
- Registers for Internet banking, when all their prior banking has been at a branch
- Indicates they should have enough money to pay bills (e.g. they complain of having no heating despite the fact they can afford it)
- Expresses concern about missing funds, or personal or financial documents
- Indicates their mail is no longer being delivered to their home.

Other suspicious activity includes a third party presenting a withdrawal form containing the customer's signature, but the rest of the form is filled out in different handwriting; or when withdrawals or transfers are made on behalf of the customer without prior direct contact from them.

Anyone can be an abuser

A 'financial abuser' can be someone a customer hardly knows or someone they have known for many years. They could be family members, friends, acquaintances or strangers who befriend customers. They may also be professionals or caregivers employed to help customers.

Family members are the most common financial abusers, e.g. adult children, spouses or de-facto partners who exhibit 'inheritance impatience' or siblings who are competing for 'their share' of the family's money.

While the motivations of financial abusers may be complex, and at times mired in past family history, it is possible to make some general statements about them and how they see their behaviour:

- Close relatives account for about 80% of suspected abuse cases
- Gender seems to make little difference
- Financial abusers often have a sense of entitlement which may come from a belief that:
 - As they will or should inherit an asset eventually, they might as well get the benefit sooner rather than later
 - It is important to protect their perceived inheritance from incurred expenses even though those expenses are necessary for the customer's health and wellbeing
 - They should be reimbursed for caregiving
 - As they have been abused in the past, they are entitled to settle old scores.

The financial abuser's sense of entitlement is a common theme in these statements. It is probably fair to say the abuser often fails to recognise that the money is not actually theirs.

Certain events may trigger the abuse, such as financial stress, family conflict (including siblings competing for control of the funds or resources), gambling or other addiction problems, including drug and alcohol abuse.

In other situations, the financial abuser may simply be ill-equipped to hold a position of trust. For example, they may not understand their obligations in roles such as holding a power of attorney (i.e. to act in the best interests of the person they represent and not be swayed by personal interest; not to act for personal gain or benefit; not to make unauthorised gifts; and to keep the person's money and property separate from their own).

A caregiver's conduct may also gradually change. They may initially carry out the customer's banking responsibly, but slowly increase the amount and frequency of withdrawals in an opportunistic way.

Banks should be aware that a financial abuser may accompany the customer to various branches to make transactions, in the hope that banking staff will not notice a pattern to the withdrawals.

Understanding why it is difficult for customers to seek help or report abuse

If financial abuse occurs in a relationship where the customer trusts or depends on the abuser, the customer may:

- Fear that telling someone about the abuse will lead to losing the relationship, possible retaliation from the other person, or further loss of independence
- Be reluctant to believe that someone they trust is exploiting them
- Want to protect the abuser from legal repercussions, although they want the abuse to stop
- Fear no-one will believe them or that reporting the abuse will be pointless.

A vulnerable customer may find it difficult to report financial abuse if they have limited mobility or cognitive impairment, speak English as a second language, or are entirely dependent on family members or others for support and access to services.

Furthermore, they may not realise that financial abuse is taking place, particularly if information is being withheld from them, or account statements and other mail have been redirected.

The legal framework: areas of potential liability for banks and other financial services providers

There are a number of things banks and financial institutions can do to reduce a vulnerable customer's risk of financial abuse. In addition to protecting customers, preventing financial abuse helps banks minimise fraud-related losses for the business and its customers.

Banks should ensure their relevant employees are trained to identify potential financial abuse as part of their fraud prevention programs.

Industry guidance for banks

What can banks do?

Financial abuse often involves stealing from or misusing a bank account, financial services product or credit facility. Such overt acts can make it easier for bank staff to spot when a customer is being financially exploited.

However, it is not always that easy to detect financial abuse, especially if it is not readily observable, clearly abusive or fraudulent. For example, there is often a relationship of trust or dependence between the customer and their abuser that makes it difficult for bank staff to determine consent.

Even if the financial abuse is observable, bank staff may not know what to do about it. It is important to raise awareness about financial abuse among bank staff; particularly those on the 'front-line' who are in a unique position to potentially detect the abuse.

If banks want to question a vulnerable customer whom they suspect is being financially exploited, they must do so in a sensitive way. If bank staff suspect a customer might be the victim of financial abuse, they may:

- Consider obtaining consent from customers to have conversations about suspected financial abuse. This might be a way to gain advance "permission" to have what would otherwise be awkward conversations
- Ask clear, factual, and non-threatening questions to learn the reasons for a suspect transaction, transfer, payment or withdrawal (or frequent withdrawals)
- Check the third party's authorisation and documentation to act for the customer. If a third party presents a withdrawal form or instructions, bank staff should verify the third party's authority by directly contacting the customer or checking associated documentation (i.e. power of attorney document)
- Contact their supervisor or branch manager, who can work with them to review the account history and the transaction to determine if it should be processed, stopped or reported to bank security or a senior bank officer, or whether legal, compliance or advice from the fraud department should be sought
- Talk to their internal compliance or fraud departments if the vulnerable customer is accompanied by their potential abuser. If the customer and abuser are together, a possible response is to separate the customer from their companion so they can speak alone (do not let anyone else speak for the customer unless they have the appropriate legal authority to do so – this can be a red flag that something is wrong)
- Consider offering the customer a fraud alert form¹ once they are separated from the potential abuser
- Consider delaying the transaction, transfer or payment if the customer is in immediate danger of losing money and refer the matter to a senior bank officer or legal counsel
- Notify bank security and contact the police immediately if the customer appears to be in immediate physical danger
- Consider seeking advice from the relevant State or Territory agency such as the Office of Public Advocate, Trustee Body or Elder Abuse Prevention Service. If this was to occur, the customer's information should be de-identified.

¹ The word 'fraud' might alarm the customer. Additionally, banks should be aware that every customer's situation is unique.

Administration and guardianship

In some cases, a customer has already been identified as vulnerable, and a court or tribunal has appointed a person or an organisation to make financial decisions for them. Administration and guardianship involves legally appointing someone to make decisions for an adult who is not capable of making reasoned decisions for themselves due to certain conditions, such as dementia, intellectual disability, mental illness, an acquired brain injury, or other cognitive or capacity challenges. These conditions are referred to as 'decision-making disabilities'.

Note that not all guardians can make financial decisions; only those in the Australian Capital Territory and the Northern Territory have the authority to do this.²

An administrator or guardian's decisions have the same legal force as if the person they are acting for had made the decisions themselves.

Before an administrator or guardian can be provided with access to, and information on, a customer's accounts or facilities, banks should ask for written proof of their status, such as certified copies of an instrument or order. Once verified, banks should note the appointment or authority on the customer's accounts or facilities.

Importantly, banks should ensure they are responding to the right authority, and the authority is current. If there is any doubt, bank staff should discuss the matter with a supervisor or branch manager.

Power of attorney

In some cases, a customer may have a power of attorney in place.

A power of attorney is a legal document that gives another person the right to make financial and/or legal decisions on behalf of the customer. There are two types of financial powers of attorney: general and enduring³.

A **general power of attorney** operates for a particular period of time or for a particular purpose. This is useful for customers that want to put in place a temporary formal arrangement, or an arrangement for a defined period of time (e.g. if the customer is away from home for an extended period of time and needs someone else to manage their financial affairs). A general power of attorney automatically terminates when customers lose capacity.

An **enduring power of attorney** can be designed to commence once the attorney has accepted his/her appointment, at a later time specified by the customer, or when the customer no longer has the capacity to manage their financial and legal affairs. This type of authority remains valid even when customers are no longer capable of making their own decisions.

It is not the role of bank staff (or a bank) to determine a customer's capacity. An adult setting up a power of attorney is not required to take a test to determine their capacity. The law assumes that an adult has capacity once they turn 18.

However, when creating an enduring power of attorney, a witness is required to verify that the donor understands the document they are signing and the powers they are giving to their chosen attorney(s).

Under an enduring power of attorney, it is most likely to be a customer's attorney who will decide when the customer loses capacity. However, only a medical practitioner can give a professional opinion on whether someone has lost capacity to make their own decisions. For this reason, it is important for an enduring power of attorney to demonstrate that the donor has lost capacity by presenting sufficient evidence to the bank.

Unfortunately, while powers of attorney arrangements are an important tool for protecting future financial circumstances, they can be misused, so it is critical for donors to select their chosen attorney(s) carefully.

A vulnerable customer may have a financial power of attorney on their account or credit facility. Banks need to understand the level of access the attorney has over their customer's account or facility because a power of attorney can be tailored to certain types of decisions or transactions (e.g. it may only apply to financial decisions and not decisions related to property transactions).

If bank staff are unsure or unclear on how to respond to a request from someone with a power of attorney, they should consult a supervisor and follow the bank's internal procedures.

² In the ACT and the NT a guardian may also make financial decisions for the represented person.

³ In some jurisdiction, an enduring power of attorney can operate immediately if authorised, and therefore, operates like a general power of attorney.

Summary

It is important that bank staff should:

- Watch out for vulnerable customers who regularly visit their branches and learn about their circumstances (e.g. note a customer who may be vulnerable and ask them how they are doing)
- Offer information to vulnerable customers on how they can protect themselves and prevent potential financial abuse
- Escalate the issue within the bank if they suspect a customer is being financially abused and in accordance with the bank's internal processes, procedures and policies
- Speak to their supervisor or branch manager if they are unsure how to respond to an authority (administrator, guardian or power of attorney) on a customer's account or credit facility
- Be aware that a customer who is being financially abused will likely not respond meaningfully if they are questioned when the suspected abuser is with them.

Where to go for more information

- The Australian Guardianship and Administration Council website at www.agac.org.au/links has links to State and Territory agencies with information on power of attorney documents and other guardianship issues.
- The Australian Network for the Prevention of Elder Abuse website at www.anpea.com.au/Links.aspx has links to relevant State and Territory elder abuse services.
- The Alzheimer's Australia 'Is It Dementia' website at <http://isitdementia.com.au/banking.html#1> has general information about dementia and specific information and training support materials for the banking industry.
- The Financial Ombudsman Service website at www.fos.org.au, which has Bulletin 56 (published in December 2007).
- The Seniors Rights Victoria website at www.seniorsrights.org.au, which has information and resources available for older Victorians as well as the broader community.

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