

KEY POINTS

What is the issue?

The treatment of clients in vulnerable circumstances has moved up the national agenda. It is essential that all professionals gain a thorough understanding of its implications for service delivery.

What does it mean for me?

Practitioners should review their policies and processes to make sure they are fit for purpose in relation to vulnerability, and train all staff in the technical aspects and soft skills necessary to allow them to act appropriately and provide a 'safe pair of hands'.

What can I take away?

A better understanding of how anyone can find themselves in vulnerable circumstances, how this can be recognised and the steps that should be taken to ensure clients in vulnerable circumstances are treated fairly.



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Vulnerable client or vulnerable circumstances?

ROBIN MELLEY PROVIDES A FINANCIAL PLANNER'S PERSPECTIVE ON HOW BEST TO ADVISE CLIENTS IN VULNERABLE CIRCUMSTANCES IN ENGLAND AND WALES



There are some very powerful reasons for describing clients as being in 'vulnerable circumstances', rather than labelling them 'vulnerable clients'. Notwithstanding the fact that people do not wish to be labelled as 'vulnerable', thinking of clients in vulnerable circumstances encourages the advisor to have an awareness of what may be causing the vulnerability and how to safeguard, support and advise the person as an individual.

The aim is to help the client avoid detriment and achieve the same outcomes as if they were not subject to vulnerable circumstances.

DEFINING VULNERABILITY

The UK Financial Conduct Authority (FCA) has recently published its guidance on vulnerability¹ and there are some

important points that we, as regulated advisors, must be mindful of. The first is that the FCA has defined a vulnerable consumer as:

'... someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care.'

The FCA has identified four key drivers: health, life events, capability and resilience. It may be contended that there is a fifth driver: abuse, as defined in the *Care Act 2014*. Mental capacity is also a vital consideration.

That aside, one does not need to be a highly qualified professional to recognise vulnerability; one may instinctively know when someone is either feeling vulnerable or is in vulnerable circumstances.

IT IS THE CIRCUMSTANCES THAT CREATE THE VULNERABILITY

It is accepted that there are people, or groups of people, who will probably always be vulnerable. These include those who have suffered a catastrophic brain injury and the loss of mental capacity, or those who have been left with life-changing physical injuries.

The term 'vulnerable client' should be challenged, as it does not recognise the fact that it is the circumstances that have created the vulnerability and not an innate human condition that only affects certain groups. Further, it is worth remembering that vulnerability may be temporary or permanent and it may be obvious or hidden from view.

There are countless examples of people who have suffered detriment even after having taken professional advice, because their vulnerable circumstances were not disclosed or apparent.

SOFT SKILLS ARE AS IMPORTANT AS TECHNICAL COMPETENCE

It is as important to employ soft skills as technical knowledge when advising clients in vulnerable circumstances. Understanding the *Mental Capacity Act 2005* (MCA 2005) is vitally important in, for example, explaining the obligations placed upon an attorney. However, it is equally important to know how to deal with some of the sensitivities, such as explaining to a client why their mental capacity needs to be assessed, or challenging and coaching an attorney to change course to make sure they are acting in the donor's best interests and complying fully with the MCA 2005.

THE PROFESSIONAL ADVISOR'S ROLE IN COMBATING FINANCIAL ABUSE

It is not possible to consider vulnerability without also considering the issue of financial abuse. People in vulnerable circumstances are at a higher risk of being victims of financial abuse. It is as simple as that. Being well informed on financial abuse and scams forms an important part of an advisor's role and contributes to the efforts being made nationally to combat financial abuse.

Sadly, many of the perpetrators of financial abuse are members of the victim's family or are already connected with the victim. Fortunately, STEP members are often in a position to witness some of the cues that suggest the client may be being victimised.

To best protect their clients, advisors should consider whether:

- the client is being coerced into changing their will;
- an attorney appointed under a lasting power of attorney or enduring power of attorney (EPA) is complying with

'Vulnerability, by its very nature, requires a multidisciplinary approach to ensure that the client in vulnerable circumstances is properly supported through the advice process'

their obligations under the MCA 2005; and

- a client suddenly has a new 'friend' who is taking a keen interest in their finances.

These are often tricky situations to deal with, and there is a temptation to think that it is not the advisor's concern and that someone else will deal with it. The author would contend, however, that we have an increased obligation to intervene and not remain professional bystanders. Knowing how to handle these situations and signpost appropriately is something all advisors must understand. Apart from anything else, one will want to avoid a situation where they are unwittingly complicit in facilitating abuse.

It will surprise many to discover that financial abuse is not a crime, per se, in the UK. The police can only investigate financial abuse if it falls within the jurisdiction of the *Theft Act 1968* or the *Fraud Act 2006*; and the local authority can only prosecute under consumer legislation. For example, abuse within a family often goes unchallenged.

Consequently, professional advisors may be the only people in a position to sound the alarm.

EVEN MILLIONAIRES CAN BE VULNERABLE

Example

Sheila is an elderly widow with significant savings of in excess of GBP1 million. Sheila's two sons had been appointed as attorneys under an EPA and, despite Sheila having full mental capacity (with no signs of losing capacity), the EPA had been registered with the Office of the Public Guardian. It came to light that the two sons were using their position as attorneys to arrange significant gifts to themselves and their family members.

The sons failed to realise that, by registering the EPA, they had created

the presumption that their mother had lost mental capacity. It also seemed to have escaped their attention that they were now required to seek an order from the Court of Protection to ratify (or otherwise) the gifts that were clearly not covered by s.12 of the MCA 2005.

This example highlights the value of having the required technical knowledge and applying the necessary soft skills in helping attorneys to meet their statutory obligations.

COLLABORATION AND TAKING A HOLISTIC APPROACH ARE KEY

Vulnerability, by its very nature, requires a multidisciplinary approach to ensure that the client in vulnerable circumstances is properly supported through the advice process and is able to achieve the desired outcomes.

Practitioners are not social workers or healthcare professionals. However, the client may need input from a number of professional advisors to help them navigate through the decisions that need to be taken in order to achieve the same positive outcomes as they would have, had the client not been in vulnerable circumstances. The natural conclusion, therefore, is that a collaborative approach is needed to provide a safe pair of hands.

Financial planners enjoy long-term (sometimes lifelong) relationships with their clients, which include an annual review, and are, therefore, uniquely placed to recognise vulnerability and arrange a course of action that includes collaboration with other professionals. By way of contrast, although it is a generalisation, lawyers often provide a package of advice and then only see the client again when there is another legal advice requirement; for example, to write a will at a later date.

The question of 'best endeavours' versus 'reasonable endeavours' often crops up in conversations about vulnerability and, in particular, in relation to suspected financial abuse of a client. However, this may be viewed simply.

When graduating as a Chartered Financial Planner, one takes an oath that includes a promise to 'always place my client's interests above my own'. Therefore, the oath may be seen as having made a commitment to always put their client's interests above any commercial interest. In other words, to use best endeavours.

#BUSINESS PRACTICE

#ENGLAND AND WALES

#VULNERABLE CLIENT

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