

Providing services to people who are vulnerable

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Introduction

Solicitors and law firms often provide legal services to clients at some of the most difficult times in their lives. Some of these clients may be vulnerable and it is essential that they are able to exercise their rights in the same way as anyone else. Ultimately, the law should always be applied in a way that is accessible, fair, and efficient.¹ ^[#n1]

We highlighted poor standards of service to people who may be vulnerable as a priority risk in 2015, and it continues to be of concern to us.² ^[#n2] We believe that if solicitors and law firms have a better understanding of people's needs, they will be in a stronger position to provide high standards of service to their clients.

This report brings together a range of resources and information for solicitors and law firms to use. It may also be of interest to other organisations that support people with legal problems.

Open all ^[#]

How do you identify people who may be vulnerable?

A person with a vulnerability is usually described as someone who is at a higher risk of harm than others.

The statutory term 'vulnerable adult' describes people over the age of eighteen, towards whom the state has specific safeguarding responsibilities, such as:

- living in residential or sheltered accommodation
- receiving certain types of health and social care
- receiving certain types of welfare support
- detained in lawful custody.³ ^[#n3]

A number of solicitors and law firms regularly provide services supporting vulnerable adults, such as those specialising in the fields of mental health law, social welfare law or those acting as an attorney under a Lasting Power of Attorney. However, anyone providing legal services to the public could potentially be dealing with a vulnerable adult or their appointed representative in any type of matter, from buying a house to writing a will.

The statutory definition is very specific, but should not be your only consideration when thinking about how a person might be vulnerable.

You should also consider vulnerability in relation to:

- a personal characteristic, such as having a low income or a low level of literacy
- a situation, such as a bereavement or a threat of deportation.

The following personal characteristics and situations are examples of risk factors that could make someone more vulnerable. This is not an exhaustive list, and is based on suggestions from the Legal Services Consumer Panel, building on the British Standard on Inclusive Service Provision.⁴ ^[#n4]

| |
|-----------------|
| Characteristics |
|-----------------|



| | | |
|-------------------------|-----------------------|---|
| Age | Low Income | Inexperience |
| Low literacy | Learning disabilities | Cultural barriers |
| Physical disabilities | Mental health issues | English as a second language |
| Health problems | Location | Being a carer |
| Lack of internet access | Lone parent | Living alone or in poor living conditions |

| Situation | |
|---------------------------------|-----------------------------|
| Threat of harm | Victim of crime or accident |
| Bereavement | Loss of income |
| Relationship breakdown | Loss of employment |
| Having recently left care | Threat of deportation |
| Concern over access to children | Concern over child welfare |

Issues specific to legal services

In addition to these characteristics and situations, three other factors can make consumers particularly vulnerable in the legal services market.

- The knowledge gap between the general public and solicitors
- People often take legal advice at times of difficulty or stress
- It is often difficult for people to judge the quality of legal services, even after they have received them.

There are also some types of legal work where it is more likely that a consumer will experience difficulty or stress impacting their quality of life, such as asylum work.

Finally, vulnerability is not just about a person's situation; it can be caused or exacerbated by a solicitor or someone working in a law firm. For instance, if someone is persuaded to take forward an unmeritorious case, which results in costs they cannot meet. Another example could be if problems were caused by failure to make a proper reasonable adjustment.

There is no reason why a person meeting any of the definitions above should not receive a proper standard of legal service.

Benefits of considering vulnerability

Helping vulnerable people to understand their legal problems and effectively access justice is of huge benefit in terms of upholding the rule of law and protecting the public. There are also benefits for firms and consumers alike, including:

- vulnerable people better understanding their legal matter and the likely outcome
- supporting the safety and wellbeing of vulnerable people
- a positive impact on the reputation of solicitors and law firms.

Your responsibilities

Below we outline your responsibilities under relevant regulation and legislation.

Regulation

SRA Principles

The Principles embody the key ethical requirements on firms and individuals who are involved in the provision of legal services. Of particular relevance to standards of service to people who are vulnerable are:

Principle 2:

You must act with integrity.

Principle 4:

You must act in the best interest of each client.

Principle 5:

You must provide a proper standard of service to your clients.

Principle 6:

You must behave in a way that maintains the trust the public places in you and the provision of legal services.

Principle 9:

You must run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity. 5 ^[#n5]

SRA Statement of Solicitor Competence

Our Statement of Solicitor Competence provides more detail on what a proper standard of service for people who are vulnerable means. The relevant sections are:

C. Working with other people

C1. Communicate clearly and effectively, orally and in writing, including:

b. Responding to and addressing individual characteristics effectively and sensitively

c. Using the most appropriate method and style of communication for the situation and the recipient(s)

g. Imparting any difficult or unwelcome news clearly and sensitively

C2. Establish and maintain effective and professional relations with clients, including:

b. Providing information in a way that clients can understand, taking into account their personal circumstances and any particular vulnerability

d. Identifying and taking reasonable steps to meet the particular service needs of all clients including those in vulnerable circumstances.6 ^[#n6]

Legislation

The following legislation covers requirements when providing a service for specific groups of people who may be vulnerable.

The Mental Capacity Act 2005

Sometimes solicitors or law firms will have questions about whether a prospective or current client has the capacity to instruct them. It is necessary for them to consider what it means to act in the best interests of a client who may lack capacity.9 ^[#notenine]

Under the Mental Capacity Act 2005 (MCA) and the MCA Code of Practice, if you think a client or potential client lacks capacity, you must not assume that this is the case. Instead, you should

assess their capacity prior to taking any instructions, taking into account the principles set out in the MCA. 10 ^[#noteten]

The MCA provides that a person will lack capacity if they are unable to make a decision for themselves or because of mental incapacity. Someone lacks the capacity to make decisions under the MCA if they are unable:

- to understand the information relevant to the decision;
- to retain that information;
- to use or weigh that information as part of the process of making the decision; or
- to communicate his decision (whether by talking, using sign language or any other means).¹¹

^[#noteeleven]

If after speaking to your prospective or current client you still have concerns about their capacity to make a decision, you may want to get an expert opinion.

Our Professional Ethics team ^[<https://www.sra.org.uk/home/contact-us/>] can offer guidance on this as well.

Practical examples

Here are some real-life examples of what firms are doing to serve people who may be vulnerable. These do not constitute guidance or best practice but instead highlight some ideas you may consider using.

The examples illustrate that small changes can make a big difference to people.

Identifying the needs of older people

A law firm is working with their local council's Older People's Forum to better understand the needs of older clients to make sure that their services are appropriate to these people. Many local authorities run these forums and they can be a good way to understand the issues facing members of your local community.

Overcoming language barriers

A specialist immigration firm is making sure that important information such as costs, legal processes, procedures and client care letters are translated into a client's first language where needed. This helps them understand what to expect from their solicitors from start to finish in a clear and accessible way.

Addressing literacy

A large law firm is redrafting its terms of business to provide an 'easy read' version for clients whose first language is not English or who have other considerations, such as learning difficulties. Representative organisations often have guides to help you write appropriately for different groups, for example Mencap's guide for accessible writing.¹² ^[#notetwelve]

Supporting homeless clients

A firm has changed its approach to working with homeless clients by meeting them at a shelter or similar location of their choice, rather than asking them to come into the firm's office. They also use text messages as their main form of communication, rather than the usual written correspondence.

How we are playing our part

Here at the SRA, we consider potential vulnerability when looking into reports of solicitor misconduct. One of the factors that influence our assessment is whether individuals are able to protect themselves against harm or exploitation.¹³ ^[#notethirteen]

In terms of regulatory action, when a solicitor takes advantage of a person who may be vulnerable the Solicitors Disciplinary Tribunal considers this an aggravating factor and their judgement will reflect this.¹⁴ [fn4teen]

A serious aggravating factor in the case was the increasing vulnerability of [the client] when compared to the sophistication and experience of the respondent.

SDT judgement regarding a case of taking unfair advantage

The SDT noted in particular that the respondent had taken advantage of two of his clients, one of whom was especially vulnerable.

SDT judgement regarding a case of dishonesty offences

In determining the seriousness of the respondent's misconduct, the SDT had borne in mind the extent to which he had acted in breach of a position of trust with two very elderly and vulnerable clients.

SDT judgement regarding a case of taking unfair advantage

Further work being done

This report brings together some of the existing information on appropriate standards of service to people who may be vulnerable. However, we know there are evidence gaps such as whether standards of service change in different areas of law, or if certain groups are less likely to be treated fairly and in accordance with our competence statement.

To help address this, we are undertaking new research during 2016. We will look at the areas of law where solicitors and law firms are likely to encounter people who may be vulnerable.

This research will provide further evidence to support our role as a regulator in offering the right kind of public protection, as well as highlight areas of good and bad practice in the legal sector.¹⁵ [notefifteen]

More information

General resources

Summary of why failure to provide a proper standard of service to vulnerable consumers is a priority risk for the SRA. Includes latest trend information - SRA priority risks tool - Failure to provide a proper standard of service, particularly for vulnerable consumers
[<https://www.sra.org.uk/sra/research-publications/risk-outlook-202122/>]

Detailed guidance on working with vulnerable clients in practice - Law Society practice note on meeting the needs of vulnerable clients [http://www.lawsociety.org.uk/support-services/advice/practice-notes/meeting-the-needs-of-vulnerable-clients-july-2015/]

Advice for the public on choosing and using legal services, written in plain English - Legal Choices - consumer website run by the frontline legal services regulators
[<http://www.legalchoices.org.uk/>]

Designed for regulators but useful for firms too - discusses the British Standard on Inclusive Service Provision in the context of legal services - Recognising and responding to consumer vulnerability: a guide for legal services regulators
[http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Guide%20to%20consumer%20vulnerability%202014%20final.pdf]

More detailed information for legal professionals working with specific client groups

Legal definition of a vulnerable adult: Safeguarding Vulnerable Groups Act 2006
[<http://www.legislation.gov.uk/ukpga/2006/47/section/59>]

Help and guidance from the Government on the Act: Mental Capacity Act 2005: Code of Practice [<http://www.legislation.gov.uk/ukpga/2006/47/section/59>]

Government resources for the general public, including those caring for people who may lack capacity: Mental Capacity Act - making decisions [<https://www.gov.uk/government/collections/mental-capacity-act-making-decisions>]

Reference guide from Solicitors for the Elderly aimed at legal professionals. Looks at recognising, preventing, and dealing with abuse and neglect of older people: A safeguarding strategy for recognising, preventing and dealing with abuse of adults at risk [<https://sfe.legal/>]

Research for the SRA on the experiences of deaf and hearing impaired people using legal services: Legal Choices, silent process; engaging legal services when you do not hear

Research for the LSB on the experiences of people with learning disabilities using legal services: What happens when people with learning disabilities need advice about the law?

Suite of resources looking at the legal rights of people with learning disabilities: Mencap - Laws and rights [<https://www.mencap.org.uk>]

Additional resources available since publication

Good practice guidance when preparing for trial in cases involving a witness or a defendant with communication needs: The Advocates Gateway Toolkits [<https://www.theadvocatesgateway.org/>]

Mental health guides and advice for supporting vulnerable clients: The Law Society resources [<https://www.lawsociety.org.uk/topics/advocacy/mental-health-guides-and-advice-for-supporting-vulnerable-clients>]

Our latest guidance sets out your obligations and how to comply with them when accepting instructions from vulnerable clients or third parties acting on their behalf [<https://www.sra.org.uk/solicitors/guidance/accepting-instructions-vulnerable-clients/>]

Notes

1. What is the Rule of Law?, World Justice Project, 2016
2. Risk Outlook 2015/16, SRA, 2015
3. This is not an exhaustive list, the full criteria are available in Safeguarding Vulnerable Groups Act 2006, section 59 [<http://www.legislation.gov.uk/ukpga/2006/47/section/59>], HM Government
4. Recognising and responding to consumer vulnerability: a guide for legal services regulators [http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Guide%20to%20consumer%20vulnerability%202014%20final.pdf], Legal Services Consumer Panel, 2016
5. SRA principles 2011 [<https://www.sra.org.uk/solicitors/handbook/handbookprinciples/>], SRA, 2016
6. Statement of Solicitor Competence [<https://www.sra.org.uk/solicitors/competence-statement/>], SRA, 2016
7. Equality Act 2010, c.15, Part 2, Chapter 1, Section 6 – Disability; Equality Act 2010, c.15, Part 2, Chapter 2, Adjustment for disabled persons, Section 20 [<http://www.legislation.gov.uk/ukpga/2010/15/section/20>]
8. Equality Act 2010, c.15, Part 2, Chapter 2, Adjustment for disabled persons, Section 20 [<http://www.legislation.gov.uk/ukpga/2010/15/section/20>]
9. Mental Capacity Act 2005, c.9, Part 1, Preliminary, Section 4 – Best interests [<http://www.legislation.gov.uk/ukpga/2005/9/section/4>]
10. Mental Capacity Act 2005, c.9, Part 1 – the principles; Mental Capacity Act 2005 Code of Practice [https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/497253/Mental-capacity-act-code-of-practice.pdf], Department of Constitutional Affairs, 2007

11. Mental Capacity Act 2005, c.9, Part 1, Preliminary, Section 3 – Inability to make decisions [<http://www.legislation.gov.uk/ukpga/2005/9/section/3>]
12. Am I making myself clear? Mencap's guide for accessible writing, Mencap, 2000
13. Incoming reports – Risk assessment methodology, SRA, 2014
14. Guidance note on sanctions (4th edition), Solicitors Disciplinary Tribunal, 2015
15. As presented to SRA Board, Public Session, 2 December 2015
[<https://www.sra.org.uk/sra/how-we-work/our-board/public-meetings/archive/>]