

## SRA response

### *Vulnerable People Inquiry APPG on Financial Crime and Scamming*

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#### *Introduction*

1. The Solicitors Regulation Authority (SRA) is the regulator of solicitors and law firms in England and Wales. We work to protect members of the public and support the rule of law and the administration of justice. We do this by overseeing all education and training requirements necessary to practise as a solicitor, licensing individuals and firms to practise, setting the standards of the profession and regulating and enforcing compliance against these standards. We are the largest regulator of legal services in England and Wales, covering around 80% of the regulated market. We oversee some 1184,000 solicitors and more than 10,400 law firms.

#### *Background: our work on vulnerability*

2. As a regulator working to protect the public, we have a strong interest in understanding vulnerability. Solicitors and law firms often provide legal services to clients at some of the most difficult times in their lives. Some of these clients are transitionally vulnerable because of their situation and others may have additional vulnerabilities.
3. 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 individual, from buying a house to divorce and family matters to writing a will. It is important that vulnerability does not result in poorer service or hamper someone's ability to exercise their rights.<sup>1</sup> [fn1]
4. We highlighted poor standards of service to people who might be vulnerable as a priority risk in 2015, and it continues to be a priority for us. We also know that vulnerable individuals are less likely to contact us with concerns about the behaviour or conduct of solicitors or firms. In terms of regulatory action, if a solicitor takes advantage of a vulnerable person, the Solicitors Disciplinary Tribunal considers this an aggravating factor and its judgment will reflect this.
5. We also consider potential vulnerability when looking into reports of solicitor misconduct. One of the factors that influences our assessment is whether individuals are able to protect themselves against harm or exploitation.
6. We want to make sure that our services are fair and accessible for everyone that might need to use them. Equally, we want to encourage law firms to take the same approach with their clients.

#### *Inquiry themes*

##### **Definition of vulnerability**

7. In 2014, the Legal Services Consumer Panel published a helpful guide for legal regulators on recognising and responding to consumer vulnerability [[http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/Guide%20to%20consumer%20vulnerability%202014%20final.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Guide%20to%20consumer%20vulnerability%202014%20final.pdf)]. The guide was based on the British Standard on Inclusive Service Provision which the Panel adapted for a legal services setting.



8. Following this, in 2016 we brought together a range of resources, information and case studies for solicitors and law firms about providing services to people who are vulnerable. The report – Providing services to people who are vulnerable [<https://www.sra.org.uk/archive/risk/risk-resources/vulnerable-people/>] – includes an overview of how regulation and legislation apply when a legal services client is vulnerable.
9. We do not strictly define "vulnerability" in relation to those we regulate and members of the public we are in contact with. We use the term "vulnerable" to describe anybody who might be at higher risk of harm than others.
10. In our vulnerable people report, and subsequently in research we commissioned on the experience of consumers who might be vulnerable in family law, we take a dual approach to defining vulnerability. This approach starts from the statutory definition of "vulnerable adult" but, recognising this is quite specific, adds consideration of a person's personal characteristics and situation.
11. Using the statutory definition of "vulnerable adult" provides a good, consistent, starting point for organisations when considering whether a person might be vulnerable. But because the definition is specific, it is important that other relevant factors are taken into account.
12. Examples of personal characteristics are having a low income or low level of literacy. A situation such as a bereavement, taking on caring responsibilities or a threat of deportation could also make a person vulnerable. These circumstances might also be referred to as "transitional vulnerability".
13. Other relevant factors might be sector specific or relate to the nature of an organisation's work. In the context of our work, for example, a person who makes a report about the behaviours of a solicitor might be considered vulnerable because of the circumstances that led them to seeking legal advice in the first place. Other people might have become vulnerable because of the actions of the solicitor, for example, where a solicitor is dishonest and takes the client's money.
14. It is difficult to define vulnerability from a single category as characteristics intersect with one another and, for example, by accepting age as a factor alone, there is a risk that assumptions are made about that person. There is also a risk that people who are not in the accepted age bracket(s) might not get the additional help or support they need if they are vulnerable for other reasons.
15. However, we do know that some factors are important in terms of how vulnerability plays out and the type of support needed. For example, last year we acted on feedback from youth advocacy groups and charities about the vulnerability of under 18s in the criminal justice system. As a result, we launched a leaflet aimed at this demographic of young people to provide them with specific information in a form that would help them better understand their solicitor's role if they are being held in custody [<https://www.sra.org.uk/globalassets/documents/solicitors/youth-court-leaflet.pdf?version=492abc>].
16. Last year the Legal Services Board published research it commissioned into vulnerable consumers' experiences of legal services, which focused on people with dementia and mental health problems. Section 1.2 of the research report gives examples of factors that can apply to people with early and later stage dementia and contribute to them being vulnerable when purchasing legal services. Examples include being slower and less successful at processing and retaining information, confusion and memory loss. We recognise that cognitive decline should be a factor when considering whether an individual is vulnerable.

### Self-declared vulnerability

17. We encourage people to self-declare as a vulnerable person so that we can make a reasonable adjustment or make it easier for a person to access our services. In some circumstances we would ask for evidence, such as if we were being asked to make an adjustment that was expensive or difficult to make.

### Transitional vulnerability

18. We believe that "transitional vulnerability" is a valid consideration when determining whether an individual is vulnerable.
19. This is something we have highlighted to solicitors in our report: Providing services to people who are vulnerable [<https://www.sra.org.uk/archive/risk/risk-resources/vulnerable-people/>]. We also reiterated the importance of solicitors and law firms recognising "transitional vulnerability" in our paper Improving access - tackling unmet legal needs [<https://www.sra.org.uk/sra/research-publications/improving-access---tackling-unmet-legal-needs/>], and in our Risk Outlook [<https://www.sra.org.uk/archive/risk/risk-outlook/>] publications which update the solicitor profession on what our priority risk areas are.
20. Our vulnerability report provides some practical examples of good practice when protecting individuals from transitional vulnerability (page 10) [<https://www.sra.org.uk/archive/risk/risk-resources/vulnerable-people/>]. These include:
  1. 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 people to understand what to expect from their solicitors from start to finish in a clear and accessible way.
  2. Addressing literacy: A 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.
  3. 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.
21. We advocate a tailored approach to providing services to vulnerable people. For example, in the research we commissioned from London Economics [<https://www.sra.org.uk/sra/how-we-work/archive/reports/first-tier-complaints/>] into the experiences and effectiveness of solicitors' first tier complaints handling processes, the report recommends to firms that they tailor their service and complaints process to individuals' specific needs.

### Scams vulnerable individuals fall victim to

22. "Dubious" investment schemes, such as those that offer unrealistically high returns for people and lead to significant losses of money, are one of our priority risks [<https://www.sra.org.uk/archive/risk/risk-outlook/>]. The promoters of these schemes often try to legitimise them by involving solicitors and law firms, telling people that the solicitor's professional indemnity insurance and the SRA Compensation Fund will protect their money. It is very unlikely that this will be the case.
23. Very few solicitors would ever knowingly become involved in the promotion or administration of a questionable investment scheme. However, they may get involved by acting for the promoter of a scheme and/or the people interested in investing their money, or by passing people's money through



their client account. Examples of schemes include various forms of property investment, fine wines or carbon trading.

24. As at March 2018, we were investigating 51 reports of solicitor involvement in dubious investment schemes. There had been 106 claims to the Compensation Fund, totalling £47.4m, relating to investment schemes since 2015.
25. Financial Conduct Authority research [<https://www.fca.org.uk/news/press-releases/over-55s-heightened-risk-fraud-says-fca>] found that over 65s with savings of more than £10,000 are three and a half times more likely to fall victim to investment fraud. We are currently undertaking behavioural research exploring why people fall prey to "dubious" investment schemes. We are aiming to identify the characteristics of different types of investment schemes that make them attractive to consumers, such as promising "too good to be true" returns. This also includes testing whether the involvement of a solicitor makes schemes more appealing.
26. This will help us target our regulatory messages in order to keep the public informed and reduce the number of people falling prey to these schemes.

## Protecting vulnerable people from financial crime

27. An increase in scams relating to investment schemes prompted us to publish a warning notice [<https://www.sra.org.uk/solicitors/guidance/investment-schemes-including-conveyancing/>] to the profession and the public in September 2016. We then issued a further warning notice [<https://www.sra.org.uk/solicitors/guidance/investment-schemes-including-conveyancing/>] on investment schemes (including conveyancing) in June 2017. The warning notices outline our concerns and expectations, and provide practical tips on what solicitors should do. They also remind solicitors and firms that failure to comply is likely to lead to disciplinary action.
28. We ran social media campaigns to drive online traffic to these warning notices, and other resources such as our Risk Outlook report on investment fraud. As well as targeting Twitter and LinkedIn content at the profession and independent financial advisors, we ran a successful Facebook campaign targeting over 55s who might be looking to invest.
29. In addition to our range of research reports and online resources, we have issued ethics guidance that addresses vulnerability. This guidance reminds solicitors and law firms of their professional responsibilities. Examples include:
  1. Disclosure of client's confidential information  
[<https://www.sra.org.uk/solicitors/guidance/confidentiality-client-information/>] – this includes guidance on circumstances involving children or vulnerable adults where solicitors should consider revealing confidential information to an appropriate authority.
  2. Offering inducements to potential clients  
[<https://www.sra.org.uk/solicitors/guidance/offering-inducements-potential-clients-clients/>] OR clients – this includes reminding solicitors that they should consider whether a person is vulnerable when deciding whether it is appropriate to offer an inducement.
30. We operate a website called Legal Choices [<https://www.legalchoices.org.uk/>] , on behalf of all the legal regulators. The website has resources for members of the public that can help them get the right advice in response to a legal problem, but also highlights the behaviours they should expect to see from their lawyer.

## Data sharing and joint working

31. Addressing the challenges requires collaborative working and the sharing of information.
32. An example of best practice in relation to collaborative working can be drawn from our engagement with the Insurance Fraud Taskforce. We worked with the Taskforce, alongside other organisations, in our work to tackle personal injury fraud and the abuse of vulnerable people in this sector. Working collaboratively with these organisations has helped make sure our messages are consistent, reach the right people and make a positive difference. In addition, the Ministry of Justice (MoJ) provided data [[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/581388/whiplash-impact-assessment.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/581388/whiplash-impact-assessment.pdf)] on the types of consumers who are involved in personal injury claims, as part of its impact assessment on whiplash reforms. This data also helped inform our work in this area.
33. In other areas of our work, for example on cybercrime, we have found it helpful to draw agencies together to collaborate in developing ideas, resources and best practice.

### *Contact details*

34. Submitted by Sophie Crookson, Public Affairs Manager, on behalf of the SRA.

#### Notes

1. Guidance note on sanctions (4th edition), Solicitors Disciplinary Tribunal, 2015