

VULNERABLE CLIENT POLICY

Introduction

This policy is intended to provide staff with relevant information about the firm's Vulnerable Client Policy.

The Mental Capacity Act 2005

The Mental Capacity Act 2005 provides a statutory framework to empower and protect people who may lack capacity to make decisions for themselves and establishes a framework for making decisions on their behalf. This applies whether the decisions are life-changing events or everyday matters. All decisions taken in the safeguarding process must comply with the Act. The Act says that:

"... a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or disturbance in the functioning of the mind or brain."

The presumption is that adults have mental capacity to make informed choices about their own safety and how they live their lives. Issues of mental capacity and the ability to give informed consent are central to decisions and actions taken by the OPG under its safeguarding policy. All interventions need to take into account the ability of adults to make informed choices about the way they want to live and the risks they want to take. This includes their ability:

- to understand the implications of their situation
- to take action themselves to prevent abuse
- to participate to the fullest extent possible in decision making about interventions.

What is a "vulnerable client"?

There are three broad categories of vulnerable clients.

- clients who have capacity to make decisions and provide you with instructions, but by reason of a range of mental and/or physical disabilities require enhanced support to engage your services and give you instructions
- clients who lack mental capacity to make decisions and provide you with instructions, for whom a range of statutory and other safeguards must be followed
- clients who are vulnerable to undue influence or duress and who may or may not have mental capacity to make decisions and provide you with instructions

The following are examples of those who may be considered to be vulnerable:

- advanced age, children and young people
- physical disabilities or ill-health
- cognitive impairment

- loss of mental capacity to make relevant decisions
- mental health problems
- learning disabilities
- sensory impairment
- dementia
- acquired brain injury caused for example by a stroke or head injury
- severe facial or other disfigurement
- difficulty in accessing and/or understanding complex information, for example, because of psychological or emotional factors such as stress or bereavement
- communication difficulties, including no or limited speech, English as a foreign language, limited ability to read or write and illiteracy
- experience of domestic violence or sexual abuse
- heavy reliance on others (family or friends) for necessary care, support or accommodation
- long-term alcohol or drug abuse
- exposure to financial abuse

The possibility of vulnerability should be considered whenever you are consulted or instructed by a client in any matter; the firm believes that clients involved in private client and personal injury matters are at particular risk.

The assessment should be conducted whenever possible with the client alone. You should not assume that anyone accompanying the client (including a family member) has their genuine interests at heart.

It may be useful if you also observe how any relative or friend who has accompanied the client behaves towards the client and vice versa as that may identify whether there is the risk of undue influence or pressure.

If you are concerned about a client's capacity, especially in relation to a decision with serious consequences either for them or other people, it is advisable to seek the opinion of an appropriately qualified professional. Where possible, you should choose a professional who knows your client and has expertise relevant to your client's condition. You should explain to the professional the legal test of capacity and ask for an opinion as to how the client's medical condition may affect their ability to make the decision in question.

Taking instructions on behalf of a client who lacks capacity

Depending on the circumstances of the case, you may be able to act, or continue to act on behalf of a client lacking capacity to instruct you by obtaining your instructions from a litigation friend, attorney or court appointed deputy. For example:

- You may act under the instructions of an attorney (such as a family member) appointed under a registered enduring power of attorney (EPA) or lasting power of attorney (LPA), provided the decision in question is within the scope of their authority. You may act under the instructions of a court appointed deputy (depending upon the scope of the deputy's authority)
- You may continue to conduct legal proceedings on the client's behalf acting on the instructions of a litigation friend appointed by the court.
- Where there are no current proceedings, but where proceedings are contemplated, you may be able to identify a third party who can give instructions on the client's behalf, as a proposed litigation friend. The proposed litigation friend is able to sign an application for legal aid on behalf of the client: see Regulation 22 of the Civil Legal Aid (Procedure) Regulations 2012 and paragraph 3.12 of the Standard Civil Contract 2014.

You should also be aware that the new Rule 3A within the Court of Protection Rules allows the Court of Protection in some cases to appoint an accredited legal representative to act for a client without a litigation friend (assuming that a panel of representatives will have been created).

What is a Deputy?

A deputy is a person appointed by the Court of Protection to manage the affairs of someone who lacks the mental capacity to manage their own affairs. A deputy is usually a friend or relative of the person who lacks capacity, but in some circumstances could be a professional such as a solicitor or accountant or another professional appointed by the court. Professional deputies will charge for their time. A number of staff within the firm have been appointed as Deputies.

New Deputy Standards

On 6 July 2015, the Office of the Public Guardian (OPG) introduced new deputy standards to support and supervise professional and public authority deputies.

These new standards are part of a wider programme of changes aimed at helping these deputies offer the best possible service to their clients. The OPG has advised that they already have new dedicated supervision teams for each type of deputy - lay, professional and public authority - which they hope will result in a better provision of service and will allow them to have a better view of each case.

Most importantly, however, these standards will help deputies make sure their clients' best interests are served at all times.

The new standards for professional deputies are important for solicitors in England and Wales who act as deputies in their professional capacity. The standards set out what is expected of professional deputies and outline a checklist of actions and behaviours every deputy should follow. Deputies will be assessed against the standards through either face-to-face assurance visits, assurance reviews conducted by telephone or during case review.

It is important that solicitors acting as professional deputies familiarise themselves with these new standards and adhere to them going forward.

Professional Deputy Standards -

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/442272/ProDeputyStandardsFINALv3.pdf

Abuse

Abuse is a violation of an individual's human and civil rights by another person or persons. Abuse may consist of a single act or repeated acts. It may be physical, financial, verbal or psychological or an act of neglect or omission to act. It may occur when an adult at risk is persuaded to enter into a financial or sexual transaction to which s/he has not consented, or cannot consent. Abuse can occur in any relationship and may result in significant harm to, or exploitation of, the person subjected to it.

Some types of abuse will constitute a criminal offence, in which case adults who lack capacity are entitled to the protection of the law in the same way as any member of the public. Whenever a criminal offence is suspected the firm will make a referral to the police. It may be necessary to make an urgent referral for the public safety of the adult at risk and/or to protect or preserve evidence.

Abuse is about the misuse of power and control that one person has over another. Where there is dependency, there is a possibility of abuse or neglect unless adequate safeguards are put in place.

Abuse can be viewed in terms of the following categories:

- Physical Abuse
 - Includes hitting, slapping, pushing, kicking, and misuse of medication, restraint or inappropriate sanctions.
- Financial abuse
 - Financial abuse can range from failure to access benefits, through inadvertent mismanagement and opportunistic exploitation to deliberate and targeted abuse, often accompanied by threats and intimidation. It can include theft, fraud, exploitation, pressure in connection with wills, property or inheritance or financial transactions, overcharging or carrying out unnecessary work, or the misuse or misappropriation of property, possessions or benefits
- Sexual abuse
 - Includes rape and sexual assault or sexual acts to which the adult at risk has not consented, or could not consent or was pressured into consenting.
- Psychological/emotional abuse

- Includes emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation or withdrawal from services or supporting networks.
- Neglect and acts of omission
 - Includes ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life, such as medication, adequate nutrition and heating. Research has shown that neglect is the most prevalent form of abuse of elders in the UK, with financial abuse a close second.
- Discriminatory abuse
 - Includes ageist, racist, sexist, that based on a person's disability, and other forms of harassment, slurs or similar treatment.
- Institutional abuse
 - The mistreatment or abuse or neglect of an adult at risk by a regime or individuals within settings and services that adults at risk live in or use, that violate the person's dignity, resulting in lack of respect for their human rights. Institutional abuse occurs when the routines, systems and regimes of an institution result in poor or inadequate standards of care and poor practice which affects the whole setting and denies restricts or curtails the dignity, privacy, choice, independence or fulfilment of adults at risk.
- Abuse of trust
 - A relationship of trust is one in which one person is in a position of power or influence over the other person because of their work or the nature of their activity. There is a particular concern when abuse is caused by the actions or omissions of someone who is in a position of power or authority and who uses their position to the detriment of the health and well-being of a person at risk, who in many cases could be dependent on their care. There is always a power imbalance in a relationship of trust.
- Mate crime
 - Mate crime is a type of hate crime where perpetrators befriend a person with a disability but in fact soon begin to exploit, hurt or harm them. This can include sexual abuse, forced prostitution, financial exploitation, physical abuse, violence and even murder.

Abuse can take many forms. It does not have to fit comfortably into any of the above. Abuse can be perpetuated by one adult at risk towards another. This is still abuse and should be dealt with accordingly. The adult at risk may also be neglecting him/herself which could also justify a safeguarding referral.

Alerts to financial abuse

Financial abuse is the main form of recorded abuse amongst adults and children at risk. Financial abuse can occur in isolation, or where there are other forms of abuse, there is likely to be financial abuse occurring also. This is not always the case but staff should be aware of this potential.

Indicators of financial abuse include:

- change in living conditions;
- possessions sold;
- inability to pay bills/unexplained shortage of money;
- unexplained withdrawals from an account;
- unexplained loss/misplacement of financial documents;
- cut off from family/friends/social network;
- carer's enhanced lifestyle;
- sudden changes in bank account or banking practice;
- the recent addition of authorised signers on a client or donor's signature card;
- unauthorised withdrawal of funds using the vulnerable person's ATM card, or changes in patterns of usage;
- sudden or unexpected changes in a will or other financial documents.

The above are illustrations of potential indicators of abuse. It does not mean that it is proof of actual abuse but may require further scrutiny. It is not an exhaustive list.

Alerts to other forms of abuse

There are a number of characteristics that may increase the risk of abuse. These include:

- Records of previous abuse or suspected abuse to client
- Previous abuse to other members of client's family
- The presence of family tensions and conflicts
- Predisposing factors to abuse have been shown to include: advanced age (75+) female, organic brain injury, cognitive impairment, physical, mental or emotional dysfunction especially depression, recent loss of spouse, social isolation, living alone, estranged from children

Who may be the alleged abuser?

Adults at risk may be abused by a wide range of people including relatives and family members, professional staff, paid care workers, other adults at risk, volunteers, other service

users, neighbours, friends, and associates, people who deliberately exploit vulnerable people, strangers and opportunistic people.

There is often particular concern when abuse is perpetrated by someone in a position of power.

Assessing and responding to the level of risk

All suspicions or allegations of abuse will be taken seriously. Staff acknowledge that the needs of the client at risk are paramount. The firm will always attempt to act in the best interests of the client at risk, being mindful that the Mental Capacity Act 2005 encourages empowerment of people who lack mental capacity. Where an individual has capacity and is not acting under duress, threat, fear or intimidation, that person has the right to make an unwise decision. All allegations of abuse or risk of abuse will be responded to promptly. The firm will respond immediately to allegations of abuse.

Reporting concerns

If you have any concerns about a vulnerable client, report them immediately to XXXX; concerns will be assessed and where appropriate reported to the relevant authorities. Appropriate client consent will be sought before any approach is made to others.

Where appropriate, family members, friends, carers or other third parties (emergency services, local authorities, etc.) will be contacted for assistance.

Assessing the needs of a vulnerable client

Having determined that you may be dealing with a vulnerable client you should assist your client and ensure they are able to access your services and overcome any disadvantage caused by their vulnerability. You should sensitively try to identify the needs of your client to find out whether they:

- Have any requirements or preferences for communicating with you
- Have any requirements to access your services, for example, to overcome mobility problems or hearing or sight difficulties
- Have any requirements in terms of how services are provided, such as documents written in clear and simple language or information given orally
- Understand and can act on the information and advice provided, or whether they may need support to do this, for example, from an advocacy service or interpreter.

Carers or family members may also be able to provide helpful information but in the first instance you should always seek to discuss these matters with the client alone, unless the client lacks capacity to give you instructions.

Reasonable Adjustments

Once you have identified that a client is vulnerable you should assess whether you need to make reasonable adjustments for them.

The 'reasonable adjustments' duty under the Equality Act 2010 is anticipatory: you must anticipate the needs of people with particular types of disability as well as making tailored reasonable adjustments for individuals. This means you need to be prepared: you should know, for example, how to find and engage a sign language interpreter.

Types of adjustments that could aid communication with your clients include:

- allowing extra time for meetings with clients who may need longer to understand what you are explaining, or who have a speech impairment, or who are communicating through a third party
- explaining issues without using legal jargon
- enlisting the help of an appropriate third party
- providing information in large print, Braille, audio, DVD or easy-read format
- providing written text on a coloured rather than a white background; this can be particularly helpful for dyslexic clients or those with a visual impairment and they can advise you as to which colours to use
- providing a sign language interpreter, lip-speaker or deaf-blind communicator
- providing a reader for clients with visual impairments
- installing an induction loop or having a portable one available
- conducting conversations with clients using the text relay system
- providing a digital recorder, dictaphone or electronic note taker, or
- not requiring the client to make complaints or other requests in writing

Roles and Responsibilities

The firm has a responsibility to do whatever it can to ensure the safety and protection of vulnerable clients at risk. Jason Grundman will promote this policy and ensure that all staff adhere to it at all times.

Jason Grundman have the following responsibilities:

- To ensure that staff are fully aware of the vulnerable client policy
- To promote the importance of the policy
- To ensure that staff can attend training and can access guidance to enable them to identify and deal appropriately with abuse and potential abuse situations
- To ensure that staff are aware of reporting systems and that these are followed

The following also have specific responsibilities:

- Jason Grundman will be the person responsible for ensuring that the firm adheres to this policy and that appropriate operational systems and processes are in place. They will hold key relationships with external agencies and stakeholders in relation to safeguarding issues and will have responsibility for staff, client and stakeholder

communications on safeguarding issues. They will also have responsibility for the management of finance policies and practices including but not limited to the provision of a robust fees policy to support safeguarding matters; adequate cash handling guidance; and an appropriate framework of internal controls to support managers across the business in the proportionate management of their risks.

All staff will have access to a copy of this policy. All staff will take responsibility for ensuring that they have read and understood this policy and the guidelines provided within it. If individuals are unsure of anything either upon reading it or when dealing with a client's case then they will seek advice or information from their manager.

All staff will participate in briefings and training provided for them on vulnerable client and safeguarding issues.

Where appropriate within their role, staff will agree objectives with their manager that contribute to the firm's role in safeguarding, and will document positive contributions they have made to that role.

All staff, but especially those having contact with clients, deputies and attorneys will use this policy and any other information provided to them for the purposes of identifying risk or incidences of abuse, and for acting appropriately in order to deal with such circumstances.

References to staff throughout this policy should be taken to include permanent, temporary and agency staff.

Training

All appropriate staff will be expected to attend training or briefings on the responsibilities of the firm, how to recognise abuse or the risk of abuse and what the firm's procedure is.

All staff who have contact with clients, deputies, visitors and client files will be expected to attend training on this policy and guidelines.

Mandatory training and briefing sessions will be provided in order to keep all staff updated, and more often for senior managers with a lead responsibility.

Policy Review

This policy will be reviewed and revised in line with national policy and legislative changes.