

Vulnerable consumers – mental health and dementia: scoping paper

Introduction

- The LSB has undertaken a research project on vulnerable consumers and their experiences of accessing and using legal services. It focused on individuals, or their carers, with vulnerabilities linked to mental health problems and dementia, as these were areas identified as having less of an existing evidence base.
- 2. This paper outlines existing research on consumer vulnerability, both in relation to mental health problems and dementia, and more generally. It was completed early in the project to ensure we did not duplicate existing work, but we are publishing an updated version of the paper alongside the research as a useful resource for others to use.
- 3. A list of the sources that have fed into this paper can be found in the table at Annex A.

Legal sector

4. The evidence gathered from the legal sector relating to vulnerable consumers can be broadly separated into two categories: guidance for practitioners; and research and reports. Many of the approved regulators have done work in this area, although we note that the extent to which their authorised persons engage with vulnerable consumers will vary. There has also been research conducted by the LSB and the Legal Services Consumer Panel (LSCP) in collaboration with relevant charities. We also found an example of an accreditation scheme that helps older and vulnerable people find lawyers that can provide specialist and tailored services.

Guidance documents

- 5. The frontline regulators' codes of conduct create obligations on providers in relation to vulnerability, however the focus of this document is on guidance and research.
- 6. Many of the regulators have produced general guidance documents which supplement codes of practice relating to recognising, responding to and dealing with vulnerable clients/consumers. Such documents provide a definition of vulnerability or a vulnerable consumer and point to risk factors that could contribute towards making a consumer vulnerable. This is typically followed by examples of good practice.
- 7. The SRA published a report last year, Providing services to people who are vulnerable, which brings together a range of resources, information and case studies for solicitors and law firms about providing services to people who are vulnerable. It covers how to identify people who may be vulnerable, the responsibilities of solicitors, and practical examples of firms managing particular vulnerabilities. This report also looks at issues specific to legal services and discusses the benefits of considering vulnerability. While highlighting many different characteristics and situations can contribute to vulnerability, this report points to three factors that 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 receiving them.
- 8. The SRA's report points out that considering vulnerability and helping vulnerable people to understand their legal problems is beneficial to both firms and consumers. Examples include that vulnerable people better understand their legal matter and the likely outcome and that it has a positive impact on the reputation of solicitors and law firms.
- 9. The LSCP has published a document *Recognising and responding to consumer vulnerability: a guide for legal services regulators.* This document covers defining vulnerability, individual risk factors, types of vulnerability (such as permanent, fluctuating and short-term) and market factors. It looks at how regulators can respond effectively through policy making, carrying out core regulatory functions and providing services to the public. The Panel's document contains checklists under each of these three areas.
- 10. The Law Society has published a detailed practice note on vulnerable clients, *Meeting the needs of vulnerable clients*. It discusses identifying vulnerability, enabling vulnerable clients to access your services, clients who may lack mental capacity, the role of carers, and it also provides case studies.
- 11. The Inns of Court College of Advocacy (ICCA) has designed the *Advocacy and the Vulnerable Training Programme* to ensure that all advocates, when dealing with vulnerable witnesses, understand the key principle behind the approach to and questioning of vulnerable people in the justice system. This training is intended to become mandatory for any advocate wishing to undertake publicly funded work for serious sexual offence cases involving vulnerable witnesses.
- 12. The ICCA also hosts the Advocate's Gateway (TAG), which provides free access to practical, evidence-based guidance on vulnerable witnesses and defendants. TAG's resources include toolkits with general good practice guidance for advocates when preparing for trial in cases involving a witness or defendant with communication needs. The toolkits are available online and include general vulnerability guidance as well as guidance focusing on specific vulnerabilities and needs. Some examples of the toolkits available include:
 - General principles from research, policy and guidance: planning to question a vulnerable person or someone with communication needs
 - Witnesses and defendants with autism: memory and sensory issues
 - Planning to question someone who is deaf
 - General principles when questioning witnesses and defendants with mental disorder.
- 13. The guidance documents above have largely taken a general approach to vulnerability rather than focus on specific risk factors. In June 2017, the BSB published two guidance documents on immigration and asylum issues, which is developed in collaboration with the SRA and the Office of the Immigration Services Commissioner (OISC). The first guidance document is aimed directly at people seeking legal help. The second is for professionals working with people with immigration and asylum issues, to help them better assist their clients to navigate the legal system.

14. Another example guidance specific to particular factors is the Law Society guidance on *Providing services to D/deaf and hard of hearing people*, which was developed in response to research commissioned by the SRA and LSCP (see paragraph 19).

Research and reports:

- 15. In March 2017 the SRA published the research report, *Experiences of consumers who may be vulnerable in family law*. This report found that the characteristics or factors most commonly identified by the surveyed legal firms as likely to make someone vulnerable in the context of family law were:
 - learning disabilities (92%)
 - mental health issues (89%)
 - low literacy (88%)
 - homelessness (80%)
 - loss of income (78%)
 - threat of harm (74%)
- 16. This report also states that legal firms reported that they infrequently provided services to people with personal characteristics that increase the likelihood of being vulnerable. The report then recommends that further work could be undertaken to assess the feasibility of a resource to allow consumer comparisons of legal firms before they are engaged. Similarly, further work could explore the provision of key information, such as costs, to consumers. It also suggests that further work, particularly formal training, would help to develop or address a gap in the knowledge and skill base of some solicitors.
- 17. In May 2016 the BSB produced its *Immigration Thematic Review*¹, which had the purpose of understanding and analysing the risks in the immigration advice and services market. The review focused on three themes of access to justice, poorly informed consumers, and quality of advice and standards of service. This is related to issues of vulnerable consumers, since the situation of seeking immigration legal advice may put the client in a position of vulnerability. Additionally, it found that language and cultural barriers, family separation, fear of sudden deportation, and the underlying reasons for seeking asylum are all factors that could lead to vulnerability and are particularly likely in many cases for people seeking immigration advice.
- 18. The BSB and CILEx Regulation commissioned a *Youth Proceedings Advocacy Review*, which was conducted by the Institute for Criminal Policy Research in 2014. The aim of this review was to inform the BSB's and CILEx Regulation's consideration of whether regulatory intervention was needed to improve the quality of advocacy in youth proceedings. Youth proceedings, like immigration, are an area of law where consumers of legal services are likely to have some level of vulnerability.
- 19. The LSCP commissioned a report in collaboration with SRA and Action on Hearing Loss, Legal Choices Silent Process: Engaging Legal Services when you do not hear. This research targeted a sample of Deaf and hard of hearing consumers in England and Wales who have experience of choosing a lawyer. It sought to determine how

¹ The findings from the BSB's *Immigration Thematic Review* are also reflected in the SRA's *Asylum report: The quality of legal service provided to asylum seekers*. In particular, the SRA looked at asylum clients with mental health difficulties. The SRA report can be found at https://sra.org.uk/sra/how-we-work/reports/asylum-seekers-report.page.

- accessible legal services are to Deaf and hard of hearing people and to identify good practice and make recommendations.
- 20. Another example focusing on a particular contributing factor to vulnerability is the research carried out by the Norah Fry Research Centre in 2013 on behalf of the LSB, the LSCP and the learning disability charity Mencap: What happens when people with learning disabilities need advice about the law? This report found that very few of the people with learning disabilities who took part in the study had initiated contact with a legal service themselves. Often they had used Citizens Advice or a solicitor known to their family, or family carers used legal services on behalf of the person with the learning disability. Most people with learning disabilities appeared to be unclear about the role of legal services and did not understand when seeking legal advice should be considered. They relied on people they trust to know what to do when confronted with a problem. The report's recommendations centre on:
 - Developing accessible information for people with learning disabilities about the purpose of legal services and how they can be used
 - Developing information and resources to clarify the routes that family carers and others can take to access specialist legal services on behalf of others
 - Strengthening the awareness legal professionals have about learning disabilities through professional training and guidance
 - The promotion of collaborative working between legal services and the social care sector.

A specific action resulting from this research was that the Law Society commissioned Mencap to run regional training events.

- 21. The frontline regulators and LSCP collectively commissioned research into client care letters (CCLs), carried out by Optimisa. While this did not target vulnerable consumers specifically, it has some relevant findings. CCLs are often the first written communication a consumer receives after taking up legal advice, but initial impressions of CCLs identified by consumers were that:
 - They are often lengthy documents
 - They contain generic information (e.g. T&Cs) and are not tailored to the individual case
 - They are presented in an unwelcoming format
 - They lack a clear purpose and it is difficult for clients to identify the key information
 - They are full of complex language and legal jargon.
- 22. These features of the CCLs make it more difficult for consumers of legal services to engage with them. The research found that all consumers had similar perceptions of CCLs, but the issues were heightened for more vulnerable consumers and had the potential to lead to complete disengagement. The ability to engage for vulnerable consumers depended on the severity of the vulnerability and the extent to which appropriate support was available.

Example of specialist legal services for vulnerable consumers:

23. Solicitors for the Elderly (SFE) is an independent, national organisation of lawyers (for example, solicitors, barristers and chartered legal executives) who provide specialist

legal advice for older and vulnerable people, their families and carers. SFE Full Accredited Members are specialists in the field of older client law and have undergone a qualification focusing on additional skills that will enable them to work with older and vulnerable people. Such lawyers are also required to tailor their services for their clients. SFE provides a "stamp of approval" for lawyers that are SFE accredited and lawyers have to fulfil SFE criteria for membership. This is an interesting example of specialist legal services provision and an accreditation mark specifically designed to help a vulnerable group.

24. Another relevant specialist accreditation scheme is the Mental Health Accreditation Scheme run by the Law Society. This covers the representation of patients in proceedings under the Mental Health Act 1983. This is linked to a Mental Health Code of Practice, which requires accredited members to deal with the case personally unless exceptional circumstances arise.

Charity sector

- 25. There has been a lot of work produced in the charity sector that relates to consumer vulnerability. This includes both guidance for professionals dealing with vulnerable consumers in a general sense and guidance relating to vulnerability linked to a particular situation or condition for example, people with learning difficulties or migrants. There has been less done with a specific focus on mental health or dementia.
- 26. Voiceability has produced a detailed guidance document aimed at advocates (that is, people who represent and support vulnerable consumers through difficult issues, as opposed to formal advocacy in court) representing people with dementia or learning disabilities. The guide aims to increase advocates' knowledge and confidence and help them to develop different approaches to take, dependent on the consumer's situation.
- 27. The National Youth Advocacy Service (NYAS) also provides specialist advocacy to children, young people and vulnerable adults. Of particular relevance for our project, NYAS provides specialist advocacy services to young people in mental health settings. NYAS also provides advocacy services to vulnerable adults, including carers of adults.
- 28. Age UK and Rethink Mental Illness are two charities which align with the focus areas of our research. Both have sections of their websites dedicated to legal issues and advice. Rethink Mental Illness provides information to people living with mental illness, their carers, friends and family about accessing legal help. Age UK's website has a section on information and advice on legal issues related to age, including making a will, what to do when someone dies and choosing a power of attorney.
- 29. The Alzheimer's Society has a section on its website dedicated to information to help make organisations more dementia-friendly. This includes guidance for staff in a customer service role to support people with dementia that they encounter, resources and guidance for organisations and individuals looking to become dementia-friendly, and making financial services more dementia-friendly. To help businesses get started on becoming a dementia-friendly organisation, in May 2017 the Alzheimer's Society published a guide containing information about how dementia affects people's experience of interacting with different organisations. It also provides tips, guidance and signposting to additional best practice resources and tools to help businesses become more dementia-friendly.

- 30. The Carers Trust has produced a range of guidance and research highlighting the needs of carers of people with mental health issues and carers of people with dementia. The Carers Trust has not produced any guidance or reports that specifically focus on legal services, although there is some discussion of legal issues, such as lasting power of attorney, in the report *Dementia: a road less rocky*.
- 31. Together, a charity for mental wellbeing, draws attention to the fact that more than 70% of the prison population has some kind of mental health problem and many pass through the criminal justice system without their mental health needs being recognised. Together provides specialist training to professionals working in criminal justice healthcare settings.

Examples outside of mental health problems and dementia

- 32. The Royal Association for Deaf people (RAD), provides an example of a "quality mark" for service industries, including law. The RAD is committed to helping mainstream services become more accessible to Deaf people. It has developed four quality marks to support services to be more accessible and to enable these organisations to showcase their work. The Deaf Law Quality Mark encourages legal services providers to improve their awareness of the needs and communication preferences of Deaf people. We should consider whether such a quality mark for other groups with specific needs or vulnerabilities could be effective in helping consumers find a legal provider.
- 33. Mind, the mental health charity, while not appearing to have produced anything directly relevant to legal services, has produced examples of detailed guidance for specific vulnerable groups, for example, guidance for NHS commissioners on commissioning mental health services for vulnerable adult migrants. Mind also runs mental health training courses for organisations, statutory bodies, schools and individuals.
- 34. Mencap and the Foundation for People with Learning Disabilities (FPLD, part of the Mental Health Foundation) focus on learning difficulties. Mencap provides legal toolkits to help people with learning disabilities to know their rights. The FPLD, like Together, draws connections with the criminal justice system.

Other sectors

- 35. We can also look to other regulated and professional sectors to see discussion of vulnerable consumers. Much of this work talks of vulnerability in a general sense, rather than focusing on specific situations that can lead to vulnerability.
- 36. A large number of regulators have a focus on vulnerable consumers, but there is only space to highlight a handful of notable examples in this paper.
- 37. The FCA produced an occasional paper in February 2015 on consumer vulnerability. It aimed to stimulate debate and interest around the subject so that firms better understand the issue and act appropriately. The paper included a Practitioners' Pack including tips and resources gained throughout the course of the FCA's research.
- 38. Regulators Ofgem and Ofwat have both produced work with a focus on vulnerability in the general sense. Ofwat's *Vulnerability focus report* published last year, like the FCA

- paper, aims to broaden the understanding of customer vulnerability in the water sector and to stimulate debate around the issue. Ofgem's *Consumer Vulnerability Strategy* sets out its approach to identifying and tackling consumer vulnerability in the energy market.
- 39. The National Audit Office (NAO) has conducted a study focusing on vulnerable consumers. This study examined and checked whether the systems and incentives in regulated industries in water, energy, telecommunications and financial services sufficiently and cost-effectively protect vulnerable consumers. Among the findings were that the impact on individuals of being in a vulnerable position can be significant and cuts across many services. The NAO identified a need for regulators to develop clear aims, objectives and progress indicators for their support for vulnerable consumers, and use these to test their interventions and develop a better understanding of what works.
- 40. The UK Regulators Network (UKRN)², of which the LSB is an observer member, has produced a leaflet about free services to help vulnerable people get extra help with their essential services, such as water, gas and electricity, bus and rail travel and phone and post services.

June 2017

_

² The UKRN has also recently published an open letter about cross-sector information exchange and distribution in relation to consumer vulnerability with a focus on the energy and water sectors. http://www.ukrn.org.uk/wp-content/uploads/2017/01/20170111-DataSharingOpenLetter.pdf

Annex A

Legal Sector				
Source	Type of information	Title and URL		
Bar Standards Board (BSB)	Report	Immigration Thematic Review		
		https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/bsb-conducts-		
		thematic-review-on-immigration-services,-adopts-recommendations/		
BSB, SRA and OISC	Guidance	Guidance for Professionals Working with People with Immigration and Asylum Issues: How to help		
		your client navigate that system.		
		https://www.barstandardsboard.org.uk/media/1837121/immigration_guidance_for_professionals_		
		<u>report - for web.pdf</u>		
		Need help with your immigration and asylum issues? What you need to know.		
		https://www.barstandardsboard.org.uk/media/1837125/need_help_with_your_immigration_and_a		
		sylum issues - for web.pdf		
BSB & CILEx Regulation	Report	Youth Proceedings Advocacy Review		
		https://www.barstandardsboard.org.uk/media/1712097/yparfinalreportfinal.pdf		
CILEx Regulation	Guidance	Risk Management: Recognising and Responding to Consumer Vulnerability		
		http://www.cilexregulation.org.uk/~/media/pdf_documents/cilex-		
		regulation/resources/12 recognising and responding to consumer_vulnerability.pdf?la=en		
CLSB	Guidance	Guidance Notes: Vulnerable Consumers		
		http://clsb.info/wp-content/uploads/2016/10/GUIDANCE-VULNERABLE-CONSUMERS-11.10.16.pdf		
ICAEW	Guidance	Guide to dealing with vulnerable clients		
		http://www.icaew.com/-/media/corporate/files/technical/legal-and-regulatory/probate-and-		
		abs/icaew-guide-to-dealing-with-vulnerable-clients.ashx?la=en		
Inns of Court College of	Training/guidance	Advocacy and the Vulnerable Training Programme		
Advocacy (ICCA)		https://www.icca.ac.uk/advocacy-the-vulnerable		
Legal Services Consumer	Guidance	Recognising and responding to consumer vulnerability: A guide for legal services regulators		
Panel (LSCP)		http://www.legalservicesconsumerpanel.org.uk/ourwork/vulnerableconsumers/Guide%20to%20co		
		nsumer%20vulnerability%202014%20final.pdf		
LSB, LSCP & Mencap	Research report	What happens when people with learning disabilities need advice about the law?		
		http://www.legalservicesconsumerpanel.org.uk/ourwork/vulnerableconsumers/Legal%20Adv		
		ice%20Learning%20Disabilities%20Final%20Report.pdf		
Regulators' Forum	Research report	Research into Client Care Letters		

		http://www.cilexregulation.org.uk/~/media/pdf_documents/cilex-regulation/resources/bsb -
		client care letters research report - final v3.pdf?la=en
Solicitors for the Elderly	Accreditation scheme; legal	"SFE accredited" stamp of approval for lawyers who meet requirements to be SFE Full Accredited
(SFE)	information provision for	Members
, ,	elderly people	http://www.sfe.legal/public/welcome
Solicitors Regulation	Report/guidance	Providing services to people who are vulnerable
Authority (SRA)		https://www.sra.org.uk/risk/resources/vulnerable-people.page
SRA	Research report	Experiences of consumers who may be vulnerable in family law: A research report for the SRA
		http://www.sra.org.uk/sra/how-we-work/reports/vulnerable-consumers.page
SRA	Risk Outlook	Risk Outlook 2016/17
		file:///C:/Users/Stephanie.Borthwick/Downloads/Risk%20Outlook%2028%207%2016.pdf
SRA, LSCP & Action on	Research report	Legal Choices – Silent Process: Engaging Legal Services when you do not hear
Hearing Loss		http://www.legalservicesconsumerpanel.org.uk/publications/research and reports/documen
		ts/Legal%20Choixes%20Silent%20Process%20.pdf
The Advocate's Gateway	Toolkits	Toolkits
(TAG)		http://www.theadvocatesgateway.org/
The Law Society (TLS)	Guidance	Meeting the needs of vulnerable clients
		http://www.lawsociety.org.uk/support-services/advice/practice-notes/meeting-the-needs-of-
		vulnerable-clients-july-2015/
TLS	Guidance	Providing services to D/deaf and hard of hearing people
		http://www.lawsociety.org.uk/support-services/advice/practice-notes/providing-services-to-deaf-
		and-hard-of-hearing-people/
TLS	Accreditation scheme	Mental Health Accreditation Scheme
		http://www.lawsociety.org.uk/support-services/accreditation/mental-health/
Charity sector		
Source	Type of information	Title and URL
Age UK	Webpage	Legal issues
		http://www.ageuk.org.uk/money-matters/legal-issues/
Alzheimer's Society	Webpage	Making organisations more dementia-friendly
		https://www.alzheimers.org.uk/info/20116/making organisations more dementia-friendly
		Dementia Friendly Businesses guide
		https://www.alzheimers.org.uk/info/20079/dementia friendly communities/361/dementia friendly
		businesses
		l

Carers Trust	Guidance	Mental health & dementia guidance, research & responses to consultation – links to many
Carcis Hust	Guidance	documents
		https://professionals.carers.org/mental-health-dementia-guidance-research-responses-
		consultations
Foundation for People with	Guidance	Criminal justice system
Learning Difficulties (FPLD)		https://www.mentalhealth.org.uk/learning-disabilities/a-to-z/c/criminal-justice-system
Mencap	Guidance	Legal toolkits: know your rights
·		https://www.mencap.org.uk/mencap-cymru/mencap-cymru-our-resources-and-guides
Mind	Guidance	Commissioning mental health services for vulnerable adult migrants: Guidance for commissioners
		http://www.mind.org.uk/media/1380137/Vulnerable-Migrants-guidance-for-commissioners-
		August-2014-FINAL.pdf
NYAS	Specialist advocacy services	Children & Vulnerable Adult Services
		https://www.nyas.net/children-vulnerable-adults-services
Rethink Mental Illness	Webpage	Legal advice
		https://www.rethink.org/living-with-mental-illness/mental-health-laws/legal-advice
Royal Association for Deaf	Quality mark/accreditation	Quality Marks
people (RAD)		http://www.royaldeaf.org.uk/about-rad/quality-marks/
Together	Specialist training for	Criminal Justice Services
	criminal justice healthcare	http://www.together-uk.org/our-mental-health-services/criminal-justice-mental-health/
	settings	
Voiceability	Guidance	Guidance to support advocates in challenging decisions or actions with or on behalf of individuals
		http://www.voiceability.org/uploads/Challenge Guidance - Advice for Advocates.pdf
Other sectors		
Source	Type of information	Title and URL
Financial Conduct	Report	Consumer Vulnerability
Authority (FCA)		https://www.fca.org.uk/publication/occasional-papers/occasional-paper-8-exec-summary.pdf
		https://www.fca.org.uk/publication/occasional-papers/occasional-paper-8-practitioners-pack.pdf
NAO	Report	Vulnerable consumers in regulated industries
		https://www.nao.org.uk/report/vulnerable-consumers-in-regulated-industries/
Office of the Public	Information and guidance	Many guidance documents and pieced of information for consumers
Guardian (OPG)		https://www.gov.uk/government/organisations/office-of-the-public-guardian
Ofgem	Strategy report	Consumer Vulnerability Strategy
		https://www.ofgem.gov.uk/ofgem-publications/75550/consumer-vulnerability-strategy-pdf

Ofwat	Report	Vulnerability focus report
		http://www.ofwat.gov.uk/wp-content/uploads/2016/02/prs_web20160218vulnerabilityfocus.pdf
UKRN	Guidance	Essential services: getting extra help
		http://www.ukrn.org.uk/wp-content/uploads/2016/07/UKRN-accessibility-leaflet.pdf