Vulnerable individuals in insolvency

INTRODUCTION

Purpose and context

This guidance aims to help insolvency practitioners and their staff recognise and respond to vulnerability in a way that supports effective engagement and good outcomes for individuals.

Supporting vulnerable people is an important aspect of ethical behaviour, caring for people and meeting legal and regulatory obligations including:

- the fundamental principles in the Insolvency Code of Ethics
- the Statements of Insolvency Practice; and
- applicable consumer protection and equality legislation

The purpose of this guidance is to assist insolvency practitioners and their staff (practitioners) in identifying, recording and responding appropriately to indicators of vulnerability among debtors, directors, creditors, employees and any other individual, practitioners deal with, and who may have an interest in or who are affected by an insolvency appointment.

Insolvency processes are, for many individuals, one of the most stressful events they will ever experience; directors facing personal liability, employees losing their jobs and individuals either in or contemplating personal debt relief solutions.

Individuals facing insolvency frequently experience acute stress, shame and anxiety which can result in a reluctance to engage with the process and, difficulty in processing information, weigh options and make decisions. It can also trigger or exacerbate mental health conditions such as depression and anxiety and can strain or fracture family and support networks.

Practitioners should ensure that all people are treated fairly, are able to understand and engage with any process affecting them and are not caused avoidable harm as a result of their vulnerability.

They should take reasonable and proportionate steps to:

- ✓ Identify where vulnerability may affect people's engagement
- ✓ Adapt communication and processes where necessary
- ✓ Take reasonable steps to support people to make informed decisions
- ✓ Monitor whether services create avoidable barriers

UNDERSTANDING VULNERABILITY

Financial distress is itself both a driver and an amplifier of vulnerability and practitioners should be alert to the ways vulnerability, in this situation, commonly presents.

Vulnerability is not a fixed characteristic or a label to be applied to an individual and may affect anyone, regardless of their usual confidence, knowledge, or experience. It can be described as a situation in which an individual's personal circumstances, combined with the actions or requirements of a practitioner or process, mean they are at greater risk of harm or disadvantage, particularly where practitioners do not respond appropriately.

Vulnerability may be:

- Permanent (eg, disability or long-term condition)
- Temporary (eg, short-term illness or stress)
- Fluctuating (varying at different stages of a matter)
- Situational (triggered by a specific life event or legal issue)

Anyone can become vulnerable, and vulnerability is often not visible or disclosed.

The Financial Conduct Authority (FCA) in its Guidance for firms on the fair treatment of vulnerable customers (**FG21/1**), defines a vulnerable customer 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***."

Although FG21/1 is written for FCA-regulated firms, this definition is equally applicable to insolvency practice. Paragraph 2.5, FG21/1 identifies four key drivers which increase the risk of vulnerability:

- **Health**- health conditions or illnesses that affect the ability to carry out day-to day tasks
- **Life events**- life events such as bereavement, job loss, or relationship breakdown
- **Resilience**- low ability to withstand financial or emotional shocks
- **Capability-** low knowledge of financial matters, low confidence in managing money (financial capability) or low capability in other relevant areas such as literacy or digital skills

FG21/1 provides examples of the types of circumstances and characteristics under these 4 drivers which can lead to individuals having additional or different needs; summarised below.

Health

Characteristics of vulnerability associated with health include:

- physical disability
- severe or long-term illness
- hearing or visual impairment
- mental health conditions or disability
- addiction
- low mental capacity
- cognitive disability

Life events

Characteristics of vulnerability associated with life events include:

- retirement
- bereavement
- income shock
- relationship breakdown
- domestic abuse (including economic control)
- caring responsibilities; along with
- other circumstances that affect people's experience of financial services eg, leaving care, migration or seeking asylum, human trafficking or modern slavery, and convictions

Resilience

Characteristics of vulnerability associated with resilience include:

- inadequate (outgoings exceed income) or erratic income
- over-indebtedness
- low savings
- low emotional resilience

Capability

Characteristics of vulnerability associated with capability include:

- low knowledge or confidence in manging finances
- poor literacy or numeracy skills
- poor English language skills
- poor or non-existent digital skills
- learning difficulties
- no, or low access to help or support

The government's Debt Management Vulnerability Toolkit , developed by the Fairness Group's Vulnerability Sub Group, which is led by the Government Debt Management Function (GDMF) and chaired by the Money Advice Trust is also a useful resource for any practitioner working in personal insolvency. It provides further guidance into identifying and supporting vulnerability.

The Money Advice Trust suggests that there are 'three golden questions' organisations should be asking when considering whether an individual is vulnerable. These are:

1. "Vulnerable to what?" – identify the harm that your customers are vulnerable to
2. "Supported how?" – give the help customers need
3. "If not us, then who?" – know where you can't help, and which external service can

The 'Help!' resource developed by the Money Advice Trust is a further useful document as it provides guidance on how organisations can create an internal 'support menu' for vulnerable consumers. It provides a useful insight into what organisations (from financial services to energy to delivery) are offering in terms of practical help. Access this resource along with other vulnerability resources, including more information on the three golden questions (the Golden Thread): Vulnerability resources | Money Advice Trust.

Vulnerability is often dynamic and cumulative
Individuals often experience multiple characteristics of vulnerability at once, and it is this combination that may affect their ability to engage effectively. For example, a debtor experiencing financial pressures, may also be experiencing ill health, have low confidence in or understanding of legal or technical matters and possess limited digital skills. It is often this combination of factors that affects a person's ability to engage effectively.

RECOGNISING VULNERABLE PEOPLE

Recognising vulnerability early on supports better engagement, trust, and outcomes. However, people may not always recognise their own vulnerability or may not wish to disclose it.

Practitioners should encourage open dialogue with people and create opportunities from the outset and throughout the matter to disclose support needs, as vulnerability may emerge or change over time.

Responsibility for identification does not however rest solely with the individuals concerned and practitioners should consider asking open questions such as:

- “Is there anything that would make this process easier for you?”
- “Would you like information in a different format or more time to consider options?”

There may be indicators that suggest additional support may be required. For example, this might include situations where someone:

- appears distressed, anxious, confused, or overwhelmed
- struggles to understand or retain key information
- repeatedly asks for clarification of the same points
- has difficulty making or communicating decisions
- shows signs of disengagement
- relies on a third party to communicate or make decisions on their behalf
- expresses uncertainty or worry about costs, processes, or outcomes despite explanations

SUPPORTING VULNERABLE PEOPLE

To support vulnerable people effectively, practitioners should ensure their services are accessible, the information they provide is understandable and they record relevant support needs appropriately to ensure that support remains consistent throughout the case regardless of staff changes.
Practical actions include:

- having policies or procedures for identifying and recording an individual’s support needs
- providing clear escalation arrangements for complex or sensitive matters
- checking understanding at key stages, particularly where important decisions are required, or complex information is being communicated

- being aware of the need to speak clearly, in plain English and at a reasonable pace when conducting telephone conversations with potentially vulnerable people and offer face to face meetings wherever possible

Where family members, carers or other third parties are involved, practitioners should ensure that the individual's wishes remain central, that any input or representations from third parties are considered appropriately, and that any risk of undue influence, financial abuse or conflicts of interest are identified and addressed where relevant. Where there are such indicators, or concerns about an individual's mental capacity, consideration should be given to whether additional safeguards or escalation to relevant bodies or authorities is required in line with internal policies or risk procedures

Reasonable adjustments

Some people may be disabled within the meaning of the Equality Act 2010 and may therefore be entitled to reasonable adjustments. Practitioners should not wait for a someone to request adjustments before considering whether they are needed. They should be considered throughout the professional relationship.

Examples of reasonable adjustments may include:

- allowing additional time for decision-making
- offering alternative communication formats
- arranging meetings with trusted third parties (with the individual's consent)

Concerns about an individual's ability to make decisions and communicate their wishes

Most vulnerable people will have full capacity to make decisions and communicate their wishes. However, on occasion, practitioners may encounter situations where there are concerns about an individual's ability to understand information, make decisions, or communicate their wishes.

Practitioners should avoid making assumptions based on age, disability, illness, or other personal circumstances and should take reasonable steps to support the individual to participate in decision-making where concerns arise. Consideration should be given to whether specialist advice is required.

Access further information

MEASURING OUTCOMES

A key focus should be not only on policies and processes but also on overall outcomes for individuals which should be monitored by reviewing complaints and feedback to identify any potential barriers, improve service design and accessibility.

Practitioners should consider whether vulnerable people:

- complete matters with a clear understanding of outcomes
- experience delays or disengagement
- experience a higher rate of case failure or early termination
- raise complaints more frequently than other people

They should also assess whether any adjustments and support measures improve engagement, decision-making and case and complaint outcomes.

RECORDING OR SHARING INFORMATION ABOUT A VULNERABLE INDIVIDUAL

When recording and sharing information about a vulnerable individual, practitioners must ensure compliance with data protection laws such as the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018.

Care should be taken to ensure that any information recorded about an individual's vulnerability is limited to what is necessary to identify appropriate support and adjustments and that any information concerning an individual's vulnerability is shared with third parties only where there is a clear lawful basis for doing so and a genuine need for disclosure.

Vulnerability data often overlaps with special category data (general health, disability, mental health) and under UK GDPR Article 9 processing of such data (which includes recording or sharing it) is prohibited unless one of the conditions in Article 9(2) apply. Practitioners should consider whether explicit consent is required from the data subject or whether any other lawful condition applies under Article 9(2) UK GDPR prior to processing such data.

Vulnerability data should be retained only for as long as relevant to the conduct of the case and reviewed or deleted in accordance with an organisation's data retention policy.

View more information about the UK's data protection legislation

VULNERABLE PRACTITIONERS

Practitioners can also become vulnerable. ICAEW members can access caba an independent charity that provides free, lifelong and confidential health, professional and financial support to past and present ICAEW members.

Find out more about caba

RESOURCES

Support needs prompts

Vulnerability	Questions to consider
Circumstances	Is the individual experiencing bereavement, illness, financial difficulties, family conflict, or another significant life event?
Understanding	Does the individual appear to understand the information being provided and the decisions they need to make?
Communication	Are there any language, literacy, sensory, digital, or communication barriers?
Decision-making	Does the individual need additional time, support, or explanations before making decisions?
Support networks	Is the individual relying on family members, carers, or others to communicate or make decisions?
Service barriers	Could any aspect of our process, communication, or service delivery be creating unnecessary difficulty?
Adjustments	Are there any practical adjustments that would help the individual engage more effectively?

Self-assessment: Assess how accessible and inclusive your services are:

Area	Good practice
Communication	☐ Offer non-digital options (phone, post, in-person) where appropriate ☐ Do not assume people can use online systems confidently ☐ Use plain English, explain next steps clearly and at a reasonable pace. ☐ Provide written summaries of key advice and decisions ☐ Offer information in different formats ☐ Check understanding at key points ☐ Ensure websites and communications are accessible. ☐ Clearly explain likely costs and any changes to estimates or uncertainties.
Processes	☐ Break matters into clear, manageable stages ☐ Simplify onboarding and initial information gathering ☐ Clearly explain what will happen next at each stage ☐ Use checklists, summaries, or visual aids where helpful
Third parties	☐ Ensure the individual's wishes remain central when third parties are involved ☐ Be alert to risks of undue influence, financial abuse, or conflicts of interest ☐ Confirm authority where someone is acting on behalf of an individual

Engagement	☐ Keep individuals informed proactively, not just on request ☐ Help individuals feel in control of decisions and progress ☐ Listen actively and respond with empathy ☐ Encourage questions and make it easy for individuals to seek clarification ☐ Allow sufficient time for individuals to make decisions ☐ Offer reasonable adjustments proactively where needed
Training	☐ Train staff to recognise indicators of vulnerability ☐ Reinforce that vulnerability can be situational and change over time ☐ Develop clear, empathetic communication skills ☐ Ensure staff know when and how to make reasonable adjustments ☐ Provide ongoing supervision and support
Systems and culture	☐ Allocate named contacts ☐ Maintain continuity where staff changes occur ☐ Have clear escalation routes for complex or sensitive matters ☐ Maintain a vulnerability policy ☐ Use complaints and feedback to improve services

External resources

- FCA Guidance for firms on the fair treatment of vulnerable customers
- Treating vulnerable consumers fairly - FCA
- Dealing with the debts of a vulnerable person - Step Change
- Consumer vulnerability: challenges and potential solutions - GOV.UK
- GOV.UK: Guidance: Debt Management Vulnerability Toolkit for service and policy mangers
- Mental Capacity Act 2005
- Mental Capacity Act: making decisions - GOV.UK.
- Equality Act 2010
- caba
- Vulnerability resources | Money Advice Trust
- UK data protection legislation