



Protecting the Wealthy Vulnerable

Ten focus points

1. If your client is considering appointing someone to manage their money under a general power of attorney while shielding, discuss with them the appointment of a professional, even if only on an interim basis during the pandemic. This can also be a good idea full stop – it avoids mixing finances and family which can often lead to disputes and bad feeling in families.
2. Ensure clients understand the risks as well as the benefits of conferring powers to a third person to act for them, for example, via a Lasting Power of Attorney (LPA). You should proceed with caution if a client arrives with a new friend or previously estranged relative who they wish to appoint as an attorney, particularly when there is a complex portfolio of assets or they have significant wealth assets. It is as important for attorneys and deputies to be fully informed about their role, their responsibilities and what they can and cannot do. Protect all parties, know what the rules are.
3. If clients wish to make lifetime gifts ensure they do so freely and are fully informed about the benefits and disadvantages. Make sure it is amply affordable, they have the requisite mental capacity to make the gift, and you have done your due diligence about their domestic and financial circumstances and the nature and extent of their assets being disposed of. During the lockdown, it is sensible to advise clients to delay such gifts until face-to-face discussions can be had. There are limits on gifts that attorneys or deputies can make on behalf of someone and so it is best to seek legal advice before you proceed with this.
4. When drafting Wills be aware of instructions coming from a third party who is to benefit from the Will, or where they insist on being present at the interview with the solicitor or where a third party is using their own solicitor to prepare a Will for a vulnerable person. Any concerns about capacity should be assessed by an independent doctor with appropriate experience.
5. See your client in person and check for consistency in their instructions. Be careful of remote assessments. Seeing a client at home is a particularly helpful insight and should be encouraged where possible. Try to see clients alone. Ask for others to take a walk while you see your client, explaining that it is important for you to check the independence of your client's instructions. During the lockdown, if the weather is fine, consider conducting the meeting outside, but be mindful of proximity to neighbours to ensure confidentiality.
6. Bottom out capacity concerns – do not leave them or put them on the too complicated pile. Ask a client's GP for their opinion or better still, especially where their estate is significant, employ a robust approach by instructing a doctor to carry out an independent assessment. Remember capacity is issue specific so the client's capacity will need to be assessed in respect of each decision. You will need your client's instructions to organise an assessment. Advise your client if they do not obtain an assessment the transaction may be vulnerable and set aside later on if it turns out they did not have capacity. A professional assessment will protect all: the donor, friends and family, solicitors and others involved.

7. If you have serious concerns about your client's capacity and the existence of financial abuse you may need to consider your duty of confidentiality and whether you need to make a disclosure. The SRA has a professional ethics helpline: **0370 606 2577**.
8. If you have evidence that your client lacks capacity and legal action needs to be taken, you should consult with family members (if appropriate) to see if there is someone who can act as a litigation friend on their behalf.
9. If the client has assets that need protecting and managing and you have evidence (or reason to believe) they lack capacity to manage their financial affairs, consider an application to the Court of Protection for the appointment of a deputy. A deputy can be a relative or a professional. Where the estate is large, a professional is usually preferred. It is best to take legal advice about making an application.
10. If you are an attorney, ensure you keep extremely good accounts so if you are asked for them you can produce accurate accounts immediately. Do not do anything which places you in conflict with your fiduciary duties to act in good faith and not to profit out of the donor's trust.

A helpful link with further information from the Law Society can be found **here**. While this is written for solicitors it's also very relevant for financial advisors and other professionals.

If acting as an attorney or deputy it is sensible to take advice on the extent of your role and responsibilities to ensure that you are fully compliant with what is required. We offer a range of legal packages to assist you. More information can be found **here**.

More information about preventing and assisting those experiencing financial abuse can be found **here**.



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