

## Meeting the needs of vulnerable people

31 August 2022

### What is involved

You can encounter vulnerable people in any area of law but you are more likely to encounter them if you practise in some areas, such as sexual offences.

When you engage with vulnerable people as part of your advocacy practice you need to:

- Identify if your client or witness is vulnerable as early as possible.
- Meet your regulatory and legal obligations in relation to vulnerable people.
- Adapt your own services to the needs of your vulnerable client or witness.
- Help the court identify and implement appropriate measures and adjustments for your vulnerable client or witness.
- Tailor the planning and delivery of your questioning to the needs of vulnerable people, who may be on the other side.

### Your obligations

Adapting your advocacy to the needs of vulnerable people is important because it helps them to participate effectively in proceedings. It can also help you meet the following SRA regulatory obligations:

#### Principles

- [Principle 2](https://news.sra.org.uk/solicitors/standards-regulations/principles/#principle-1) [https://news.sra.org.uk/solicitors/standards-regulations/principles/#principle-1]
- [Principle 5](https://news.sra.org.uk/solicitors/standards-regulations/principles/#principle-1) [https://news.sra.org.uk/solicitors/standards-regulations/principles/#principle-1]
- [Principle 6](https://news.sra.org.uk/solicitors/standards-regulations/principles/#principle-1) [https://news.sra.org.uk/solicitors/standards-regulations/principles/#principle-1]
- [Principle 7](https://news.sra.org.uk/solicitors/standards-regulations/principles/#principle-1) [https://news.sra.org.uk/solicitors/standards-regulations/principles/#principle-1]

#### Competence Statement

- [B5 Undertake effective spoken and written advocacy](https://news.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#b5) [https://news.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#b5]
- [C1 Communicate clearly and effectively, orally and in writing](https://news.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#c1) [https://news.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#c1]
- [C2 Establish and maintain effective and professional relations with clients](https://news.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#c2) [https://news.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#c2]

If you practise higher court advocacy you also need to refer to the requirements of our [Statement of standards for solicitor higher court advocates](https://news.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/accreditation/higher-rights-of-audience/statement-of-standards-for-solicitor-higher-court-advocates/) [https://news.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/accreditation/higher-rights-of-audience/statement-of-standards-for-solicitor-higher-court-advocates/].

Finally, when providing advocacy services to someone who is vulnerable, you should consider:

- Your obligations under [The Equality Act 2010](https://www.legislation.gov.uk/ukpga/2010/15/contents1) [https://www.legislation.gov.uk/ukpga/2010/15/contents1]. If you fail to meet the needs of a vulnerable client then you may be subject to a claim of discrimination or failing to make reasonable adjustments.
- Relevant procedural rules, case law, practice directions and other judicial guidance for your area(s) of practice – for example:
  - The overriding objective of the Civil Procedure Rules (Rule 1.1), to deal with cases justly. This includes making sure that parties can participate fully in



proceedings give their best evidence. [Practice Direction 1A](https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part01/practice-direction-1a-participation-of-vulnerable-parties-or-witnesses) [https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part01/practice-direction-1a-participation-of-vulnerable-parties-or-witnesses] makes provision for how the court is to give effect to the overriding objective in relation to vulnerable parties or witnesses.

- [Part 3A of the Family Procedure Rules](https://www.justice.gov.uk/courts/procedure-rules/family/parts/part-3a-vulnerable-persons-participation-in-proceedings-and-giving-evidence) [https://www.justice.gov.uk/courts/procedure-rules/family/parts/part-3a-vulnerable-persons-participation-in-proceedings-and-giving-evidence] – Vulnerable persons: participation in proceedings and giving evidence and Practice Direction 3AA.
- The overriding objective of the Criminal Procedure Rules (Rule 1.1), to deal with cases ‘justly’. The court and the parties are required to further this objective through active case management (Rules 3.2-3.3), which includes the early identification of witness’s needs.
- [The Equal Treatment Bench Book](https://www.judiciary.uk/about-the-judiciary/diversity/equal-treatment-bench-book/) [https://www.judiciary.uk/about-the-judiciary/diversity/equal-treatment-bench-book/] is a key reference point for both judges and advocates with guidance to help make sure that vulnerable people are able to participate effectively in court proceedings.

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## **What is vulnerability?**

Someone is vulnerable if they are at a higher risk of harm because they face barriers to participating effectively in court proceedings. People can be vulnerable because of:

- Permanent or long-term vulnerabilities including deafness, learning difficulties and age-related conditions. Not speaking English as a first language and having low literacy levels can also be long-term vulnerabilities.
- Fluctuating vulnerabilities, including physical and mental health conditions which affect people in different ways at different times. Someone’s living conditions may also fluctuate and make them vulnerable.
- Short-term vulnerabilities, including sudden changes in circumstances such as a bereavement, divorce or arrest which require the use of your services.
- Experiences such as domestic abuse or neglect.
- Multiple vulnerabilities. For example, someone could be vulnerable because of the circumstances that have led them to seek asylum but also because they don’t speak English, because they have a health condition and because of their living conditions.

When thinking about and dealing with vulnerability it is important to remember that:

- Individuals may not realise or accept they are vulnerable or be comfortable with the term.
- People may be reluctant to disclose a vulnerability.
- People can be at their most vulnerable when they need advocacy services.
- Vulnerability can include but is not limited to people who are disabled. You should not assume that all disabled people are vulnerable in all circumstances.
- Vulnerability is not limited to the definition of ‘vulnerable adult’ from The Care Act 2014 (an adult who is experiencing, or at risk of abuse or neglect and because of their care needs is unable to protect themselves).
- Some people who are vulnerable lack capacity to make decisions for themselves. The Law Society has guidance for solicitors working with [clients who may lack mental capacity](https://www.lawsociety.org.uk/topics/client-care/working-with-clients-who-may-lack-mental-capacity/) [https://www.lawsociety.org.uk/topics/client-care/working-with-clients-who-may-lack-mental-capacity/].

## **Identifying vulnerability**

You should identify if your client or witness is vulnerable as soon as possible so that you have enough time to identify and meet their needs. This could be because of:

- a personal characteristic, such as a health condition



- a situation such as a bereavement.

Some possible indicators of vulnerability are listed in our report, [Providing services to people who are vulnerable](https://news.sra.org.uk/risk/risk-resources/vulnerable-people/) [https://news.sra.org.uk/risk/risk-resources/vulnerable-people/]. Indicators may not be obvious and someone who has one or more indicators may not be vulnerable.

To help identify if someone is vulnerable, the Advocate's Gateway toolkit, [Identifying vulnerability in witnesses and parties and making adjustments](https://0abb646f-e7c3-4c9e-b37e-d86ac13cfbb3.filesusr.com/ugd/1074f0_bc65d21318414ba8a622a99723fdb2a0.pdf) [https://0abb646f-e7c3-4c9e-b37e-d86ac13cfbb3.filesusr.com/ugd/1074f0\_bc65d21318414ba8a622a99723fdb2a0.pdf], includes:

- Questions you can ask to elicit specific, useful and reliable information about a potential vulnerability.
- A list of behaviours which can indicate vulnerability such as a short attention span and difficulty speaking, reading, writing or telling the time.

You can also use the Law Society's [guidance on meeting the needs of vulnerable clients](https://www.lawsociety.org.uk/en/topics/client-care/meeting-the-needs-of-vulnerable-clients) [https://www.lawsociety.org.uk/en/topics/client-care/meeting-the-needs-of-vulnerable-clients] to help identify if your client or witness is vulnerable.

You may not have enough information about your client or witness, or enough experience of dealing with vulnerable people, to identify vulnerability on your own. Where this is the case, you should consider if you can access additional information from individuals or agencies that are connected to your client or witness. For example:

- carer or support worker
- social worker in a family law case
- relative or close friend
- healthcare professional
- police in a criminal case
- charity which represents the interests of people with particular conditions
- or a witness care unit may be able to provide a full assessment of the support needs of your client or witness in a criminal case.

If you are considering sharing information with third parties about your client or witness remember your obligations under the Data Protection Act 2018, including the need for consent.

The [Advocate's Gateway toolkit](https://0abb646f-e7c3-4c9e-b37e-d86ac13cfbb3.filesusr.com/ugd/1074f0_bc65d21318414ba8a622a99723fdb2a0.pdf) [https://0abb646f-e7c3-4c9e-b37e-d86ac13cfbb3.filesusr.com/ugd/1074f0\_bc65d21318414ba8a622a99723fdb2a0.pdf] recommends:

- Seeking advice from an expert witness such as a psychologist or psychiatrist if there is uncertainty about the existence, type or impact of a person's vulnerability.
- Seeking an assessment of communication needs by an intermediary if there are communication issues which would diminish the quality of someone's evidence or ability to participate in proceedings.

## **What if your vulnerable client lacks capacity?**

If you suspect that your client lacks capacity to give instructions or litigate, then it is critical that an assessment of capacity is completed.

If you are communicating with a client who lacks capacity through a litigation friend, you should not incorrectly exclude your client from the case. Or assume they have no role or say in the process.

The Law Society's guidance on working with clients who may lack mental capacity is in line with the requirements of the Mental Capacity Act 2005.

Its other guidance on meeting the needs of vulnerable clients also includes information about the role of agents, litigation friends and court appointed deputies.



## **Helping vulnerable people use your services**

Our [Competence Statement](https://news.sra.org.uk/solicitors/resources/cpd/competence-statement/statement-legal-knowledge/) [https://news.sra.org.uk/solicitors/resources/cpd/competence-statement/statement-legal-knowledge/] requires you to identify and take reasonable steps to meet the particular service needs of all clients including those in vulnerable circumstances.

Making sure vulnerable people can use your services can also help you meet your obligations under the Equality Act and the [Code of Conduct](https://news.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/) [https://news.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/] requirement to provide a competent service to all clients.

## **Understanding the needs of your client or witness**

When you identify someone is vulnerable you should build an understanding about how it can impact their engagement with you and your services, for example, by:

- Speaking to your client or the witness who may be best placed to identify what adjustments will help them engage with you and your services.
- Speaking to someone connected to your client or the witness, such as a carer, provided you have consent.
- Learning from other lawyers who are experienced in dealing with vulnerability.
- Completing effective forms of training or engaging with groups that represent people with particular vulnerabilities.

## **Adapting your service**

The Law Society's guidance on [meeting the needs of vulnerable clients](https://www.lawsociety.org.uk/en/topics/client-care/meeting-the-needs-of-vulnerable-clients) [https://www.lawsociety.org.uk/en/topics/client-care/meeting-the-needs-of-vulnerable-clients] includes some useful tips to help adapt your service so that vulnerable people can use them. Some of the key things to consider are:

- anticipatory adjustments
- flexibility around the timing, location and length of appointments
- adapting how you communicate with your client or the witness
- using specialist support professionals and communication aids
- asking your client or witness about their communication preferences.

Our report, [Providing services to people who are vulnerable](https://www.sra.org.uk/risk/risk-resources/vulnerable-people/) [https://www.sra.org.uk/risk/risk-resources/vulnerable-people/], includes some good practice examples.

## **Working with other people to support your vulnerable client**

Your vulnerable client may be supported by a carer when they use your services. Subject to client confidentiality, they may be able to help you identify how to help your client participate effectively in your services and court proceedings.

The Law Society's guidance also includes information about the role of carers, as well as a range of other roles that exist to support people who are vulnerable.

If your vulnerable client is supported by any of these people, you need to make sure you:

- understand their role and its limits
- work effectively with them without excluding your client unnecessarily.

## **Helping vulnerable people participate in proceedings**

The Equal Treatment Bench Book states that in advance of a hearing judges should obtain information about any disability, medical or other circumstance affecting a person.



You should assist this process in your role as an officer of the court. Once you have identified that your client or witness is vulnerable make sure that necessary and proportionate information is shared with the court. This is so appropriate arrangements can be made before a hearing or trial.

Your goal is to remove any barriers to the effective participation of your client or witness in court proceedings.

## Adjustments

Courts can make a range of adjustments to accommodate the needs of vulnerable people, including:

- breaks
- the removal of wigs and gowns
- the use of a live link
- an intermediary
- screens, for example, when there is an allegation of domestic abuse
- other communication aids.

The Advocate's Gateway toolkit, [Identifying vulnerability in witnesses and parties and making adjustments](https://0abb646f-e7c3-4c9e-b37e-d86ac13cfbb3.filesusr.com/ugd/1074f0_bc65d21318414ba8a622a99723fdb2a0.pdf) [https://0abb646f-e7c3-4c9e-b37e-d86ac13cfbb3.filesusr.com/ugd/1074f0\_bc65d21318414ba8a622a99723fdb2a0.pdf], includes several good practice examples and an example of poor practice.

Further specific examples can be found in:

- [The Equal Treatment Bench Book](https://www.judiciary.uk/about-the-judiciary/diversity/equal-treatment-bench-book/) [https://www.judiciary.uk/about-the-judiciary/diversity/equal-treatment-bench-book/]
- Rules or practice directions for specific areas of law
- [The Youth Justice and Criminal Evidence Act 1999](https://www.legislation.gov.uk/ukpga/1999/23/contents) [https://www.legislation.gov.uk/ukpga/1999/23/contents] (examples can be considered for vulnerable adults as well as young people, in civil cases as well as criminal cases).

## Ground rules hearings

Judges often use ground rules hearings to decide what adjustments and measures are needed to make sure that vulnerable people can participate effectively in proceedings.

They are required in criminal and family law cases involving intermediaries and good practice in any case involving a vulnerable witness.

The Equal Treatment Bench Book has guidance on ground rules hearings and sets out what they should cover including:

- communication aids
- the length of questioning
- the frequency of breaks.

There is more about ground rules hearings in the Advocate's Gateway's [Ground rules hearings and the fair treatment of vulnerable people in court](https://0abb646f-e7c3-4c9e-b37e-d86ac13cfbb3.filesusr.com/ugd/1074f0_846f9ab1f1e94dd7bd58bcc62f76ddb8.pdf) [https://0abb646f-e7c3-4c9e-b37e-d86ac13cfbb3.filesusr.com/ugd/1074f0\_846f9ab1f1e94dd7bd58bcc62f76ddb8.pdf].

## Preparing your vulnerable client or witness for court

You should take reasonable steps to make sure your vulnerable client or witness knows what to expect when they attend court. This can help them participate effectively in proceedings.

This can include:



- Making sure that a vulnerable person visits court before proceedings begin (in criminal proceedings the Witness Service may offer this service).
- Explaining what will happen during proceedings and the purpose of the questioning that your vulnerable client or witness will be subject to.
- Making sure a vulnerable witness who is going to give evidence by live link has an opportunity to practise using the live link before a trial.
- If needed, making sure a vulnerable party is able to get to court without coming into contact with other parties.
- Arranging for a vulnerable witness to refresh their memory of their evidence, if needed.
- Making sure your vulnerable client or witness knows they can:
  - request a break
  - say they don't understand a question
  - say they don't know an answer to a particular question
  - ask for a question to be repeated.

If you are involved in criminal proceedings with a vulnerable witness you should also check that the Witness Care Unit has provided appropriate forms of support.

The Advocate's Gateway's '[Supporting Participation in Courts and Tribunals](https://0abb646f-e7c3-4c9e-b37e-d86ac13cfbb3.filesusr.com/ugd/1074f0_ad43a45c558142afa3063d115a1cb3b7.pdf)' [[https://0abb646f-e7c3-4c9e-b37e-d86ac13cfbb3.filesusr.com/ugd/1074f0\\_ad43a45c558142afa3063d115a1cb3b7.pdf](https://0abb646f-e7c3-4c9e-b37e-d86ac13cfbb3.filesusr.com/ugd/1074f0_ad43a45c558142afa3063d115a1cb3b7.pdf)] includes good practice examples about helping vulnerable people participate effectively in court proceedings.

These are based on the personal experiences and views of a range of practitioners including judges, charities and support agencies, advocates and international jurisdictions.

## **Questioning a vulnerable person**

When you question a vulnerable person, you should adapt to their needs and abilities so that they understand your questions and can give their best evidence in response.

When you are preparing and asking your questions you should carefully consider:

- Any relevant directions made at a ground rules hearing.
- If the language you are using is consistent, plain English and easy to understand.
- If your questions avoid technical language, acronyms, jargon or words which could upset the person you are questioning, or preparing to question.
- If any of your questions could be broken down into shorter questions, which are easier to understand.
- If the order of your questions is easy to follow, for example, because it is chronological.

The [Advocate's Gateway toolkit](https://0abb646f-e7c3-4c9e-b37e-d86ac13cfbb3.filesusr.com/ugd/1074f0_d7792470860f4f8e8b0a1e3116cdbc94.pdf) [[https://0abb646f-e7c3-4c9e-b37e-d86ac13cfbb3.filesusr.com/ugd/1074f0\\_d7792470860f4f8e8b0a1e3116cdbc94.pdf](https://0abb646f-e7c3-4c9e-b37e-d86ac13cfbb3.filesusr.com/ugd/1074f0_d7792470860f4f8e8b0a1e3116cdbc94.pdf)] has additional tips for preparing questions for someone who is vulnerable:

- Use concrete words - avoid abstract or concept words.
- Tie questions about when something happened to events, for example, 'What was on TV?'.
- Refer explicitly to places, names and objects, for example, 'Was the money in the wallet?' rather than 'Was it inside?'.
- Would communication aids help with your questioning? This should be considered at the planning stage and usually requires an intermediary.

The same toolkit highlights things you should do when you are in the process of questioning a vulnerable person:

- Introduce yourself to a vulnerable person before they give their evidence and explain your role.



- Remind the vulnerable person to let you know if they don't understand something and if they need a break.
- Be mindful of your body language and maintain eye contact.
- Guide the vulnerable person through your questions by telling them when you are going to stop asking them about a particular issue. And when you are about to move onto a different issue.
- Use an appropriate pace. For some vulnerable people this can mean using long pauses so that they have time to process information. For others, it can mean avoiding long pauses to maintain their attention.
- Be alert for possible signs of miscommunication or a lack of engagement, for example, looking away. If an intermediary is present, they may identify these signs first.
- Confirm that you have been understood or that you and the vulnerable person mean the same thing, for example, by asking them to explain something in their own words.
- Watch out for loss of concentration. Even if breaks have been scheduled additional breaks may be needed to help vulnerable people participate effectively in proceedings.
- Make sure other advocates use appropriate questioning and draw the court's attention to any inappropriate questioning of a vulnerable person.

The Advocate's Gateway toolkit also includes help for questioning people with particular conditions, including autism and deafness, or when using a remote link.

## **Learning and development**

Our [Code of Conduct](https://news.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/) [https://news.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/] requires you to maintain your competence to carry out your role and keep your professional knowledge and skills up to date.

In line with this requirement and our approach to [continuing competence](https://news.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/continuing-competence/), [https://news.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/continuing-competence/] we expect all advocates to:

- regularly reflect on the quality of their advocacy practice
- address any learning and development needs they identify and keep a record.

Doing this can help meet the following competences from our [Competence Statement](https://news.sra.org.uk/solicitors/resources/cpd/competence-statement/statement-legal-knowledge/) [https://news.sra.org.uk/solicitors/resources/cpd/competence-statement/statement-legal-knowledge/]:

- [A2 Maintain the level of competence and legal knowledge needed to practise effectively, taking into account changes in your role and/or practice context and developments in the law.](https://news.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#a2) [https://news.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#a2]
- [A3 Work within the limits of your competence and the supervision which you need.](https://news.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#a3) [https://news.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#a3]

The [Maintaining your competence as an advocate](https://news.sra.org.uk/solicitors/resources/specific-areas-of-practice/maintaining-competence-advocate/) [https://news.sra.org.uk/solicitors/resources/specific-areas-of-practice/maintaining-competence-advocate/] section is designed to help you reflect on the quality of your advocacy practice. This includes examples of learning and development activities.

Learning how to engage effectively with people who are vulnerable and meet their needs is a key area of learning and development for many advocates. You can use the following resources to help:

- [The Law Society](https://www.lawsociety.org.uk/topics/advocacy/advocacy-and-the-vulnerable-training/) [https://www.lawsociety.org.uk/topics/advocacy/advocacy-and-the-vulnerable-training/] delivers advocacy and vulnerable training.
- The Advocate's Gateway [toolkits](https://www.theadvocatesgateway.org/case-law) [https://www.theadvocatesgateway.org/case-law] are drafted and maintained by advocates and experts in vulnerability.



- The Criminal Bar Association has produced a [short film](https://www.criminalbar.com/resources/questioning-young-and-or-vulnerable-witnesses/) [https://www.criminalbar.com/resources/questioning-young-and-or-vulnerable-witnesses/] about the questioning of young and/or vulnerable witnesses and defendants.
- [The Equal Treatment Bench Book](https://www.judiciary.uk/about-the-judiciary/diversity/equal-treatment-bench-book/). [https://www.judiciary.uk/about-the-judiciary/diversity/equal-treatment-bench-book/]
- [Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures](https://webarchive.nationalarchives.gov.uk/20130206070549/https://www.justice.gov.uk/downloads/victims-and-witnesses/vulnerable-witnesses/achieving-best-evidence-criminal-proceedings.pdf) [https://webarchive.nationalarchives.gov.uk/20130206070549/https://www.justice.gov.uk/downloads/victims-and-witnesses/vulnerable-witnesses/achieving-best-evidence-criminal-proceedings.pdf] by the Ministry of Justice (2011).
- [At Risk Yet Dismissed](https://www.mind.org.uk/media-a/4121/at-risk-yet-dismissed-report.pdf) [https://www.mind.org.uk/media-a/4121/at-risk-yet-dismissed-report.pdf] by MIND (2013) focuses on the experiences of people with mental health issues in the criminal justice system.
- [Achieving Justice for Victims and Witnesses with Mental Distress: A Mental health Toolkit for Prosecutors and Advocates](https://www.mind.org.uk/media-a/4325/prosecutors_toolkit.pdf) [https://www.mind.org.uk/media-a/4325/prosecutors\_toolkit.pdf] by MIND gives good practice guidance on how to support people to give their best evidence.
- [Report of the Vulnerable Witnesses and Children Working Group \(2015\)](https://www.judiciary.uk/wp-content/uploads/2015/03/vwcwg-report-march-2015.pdf) [https://www.judiciary.uk/wp-content/uploads/2015/03/vwcwg-report-march-2015.pdf] gives guidance on good practice.
- Access to Justice for Vulnerable People by Penny Cooper and Linda Hunting (Wildly, Simmonds and Hill Publishing 2016).
- Vulnerable People and the Criminal Justice System: A Guide to Law and Practice by Penny Cooper and Heather Norton (OUP 2017).
- Addressing Vulnerability in Justice Systems, Penny Cooper and Linda Hunting (Wildly, Simmonds and Hill Publishing 2016).
- Some charities offer training and resources about understanding and meeting the needs of people with particular conditions. For example, the [National Autistic Society](https://www.autism.org.uk/) [https://www.autism.org.uk/].