

Factsheet 2

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Identifying and Assessing Vulnerability and Clients' Needs

This factsheet will provide you with practical advice to help you identify and assess the needs of potentially vulnerable clients, including signs to look out for, questions you could ask your client and risk factors to consider when making an assessment of their needs.

Part One: Identifying Vulnerability

As a barrister, you need to be aware of the diversity of the people you encounter, and the potentially differing needs of people from a range of backgrounds, life experiences and those who have protected characteristics under the Equality Act 2010¹. You should be alert to risk factors, including certain characteristics, circumstances and behaviours that can indicate vulnerability. The identification of client vulnerability as early as possible is important to the client experience, and may have a bearing on the case itself.

Identifying people that may be at a higher risk of harm than others can be challenging, particularly in the context of the provision of legal services. At a time when a person requires immigration legal services, they may be in a vulnerable position. Not only might they be in a difficult and stressful situation, but the legal process itself can leave a person feeling more vulnerable. The disparity in knowledge between the public and legal professionals – and, therefore, the difficulty in being able to judge the quality of legal services they receive – is one reason for this. For immigration clients, this disparity may be even more pronounced due to language barriers, a lack of understanding of the providers that can help, and of the immigration system and legal system generally.

Some issues and needs will be easier to identify than others. For example, if a client has a physical disability which requires wheelchair use, this will be evident when you first meet them (although with other physical disabilities, this will not always be obvious). Other needs may be more difficult to identify or even hidden. Factors such as domestic violence, abuse, torture, being a victim of modern slavery, trauma and mental health issues can be particularly difficult to identify. Clients may not even be aware of a mental health issue themselves, or may avoid disclosing their experience of violence to others, due to shame, embarrassment, fear, or a combination of these. Some clients may also have a lack of trust in authority, due to negative experiences involving authorities in their country of origin.

1. BSB (2016) [The Professional Statement for Barristers](#)

Where you have been instructed by a solicitor, OISC-registered adviser or other professional client, do not assume that they will have already identified and/or sufficiently explored a person's vulnerabilities. Instead, proactively seek information from the solicitor (or other professional client/intermediary) about potential vulnerabilities, and establish whether an assessment has been undertaken. This will prevent the client from having to repeat information, which can be both time consuming and distressing, and may undermine a client's trust in and perception of the legal system.

In public access cases, try to arrange a consultation as soon as possible, so that any vulnerabilities and needs are identified at the outset, and a prompt assessment to determine how to meet additional needs is undertaken.

Even where risk factors are present and have been identified, vulnerability is not always acted upon. You should therefore make your own considerations and assessment of a client's potential vulnerabilities, regardless of the stage at which you meet them or the involvement of a solicitor or others.

Furthermore, the variable nature of vulnerability means that risk factors which may not have been apparent before or were not identified can appear at a later stage. This is particularly the case in the context of legal services, as the legal issue they are facing or the process itself can make an otherwise robust person vulnerable. Be alert to possible changes – behavioural and psychological – in your client, as vulnerability can change over time or may only become apparent later².

Signs to look out for

Below is a (non-exhaustive) list of signs that may indicate vulnerability. We cannot hope to provide an exhaustive list of all indicators of potential vulnerabilities, given the complexity of the subject matter. Rather, the characteristics and factors listed below will provide you with an awareness of potential issues that, should they be present, may warrant further exploration³:

2. The Advocate's Gateway (2014) [Identifying Vulnerability in Witnesses and Defendants: Toolkit 10](#).

3. Ibid. This table has been taken from The Advocate's Gateway's Toolkit 10 but has been expanded upon to include other relevant risk factors.

Behavioural characteristics	Circumstantial factors
<ul style="list-style-type: none"> • Finds it difficult to communicate without assistance/interpretation • Has no speech/limited speech, difficult to understand • Has difficulty in understanding questions/what is being said • Uses gestures or signs to communicate • Responds inappropriately or inconsistently • Cannot read or write • Has difficulty with memory and recalling facts and events • Appears eager to please • Repeats what is said to them • Appears confused by what is said/ happening • Is physically withdrawn • Has difficulty in telling the time • Appears over-excited or exuberant • Appears uninterested or lethargic • Is violent • Expresses strange ideas or makes a decision that is out of character • Unusual appearance of the eye • Hesitant in movement/reluctant to move • Uncontrollable muscular movements • Does not understand common everyday expressions • Failing to search visually for people • Appears restless, hyperactive, impulsive, inattentive etc. • Appears intoxicated during meetings • Has a history of self-harming 	<ul style="list-style-type: none"> • Receiving disability benefits • Resident at a group home or institution • Employed in sheltered workplace • Receiving support from a carer, social worker, community psychiatric nurse etc. • Is elderly • Is/has been excluded from school • Has a statement of Special Educational Needs (SEN) • Is/was under local authority care • Is/was an asylum seeker • In possession of prescribed medication • Is an alleged victim of modern slavery/ torture/rape/religious/hate crime/ sexual exploitation⁴ • Is an alleged victim of honour-based violence/forced marriage • Is an alleged victim of domestic or sexual violence • Is a carer • Has witnessed a traumatic incident • Is an alleged victim of financial exploitation • Is recently bereaved • Has lost their home/is homeless

4. Identifying victims of modern slavery involves certain unique considerations. [Factsheet 3](#) specifically considers identifying and working with victims of modern slavery.

The indicators listed above may be present when working with any type of immigration client. Of particular note, however, is asylum seekers: a group that often faces unique issues and circumstances, and comprises some of the most vulnerable individuals in society. Asylum seekers flee their home countries due to serious human rights abuses, including torture, sexual violence and forced conscription by the government or militia groups. As a result, many of the characteristics and circumstances listed above may appear in combination. For example, asylum seekers are at a high risk of suffering from post-traumatic stress disorder (PTSD) and other mental disorders, as compared to the general population⁵; the consequences of which can manifest themselves in various ways, such as being withdrawn, nervous, violent and aggressive, an inability to sleep or recall events, restlessness, self-harm and other behaviours.

You should exercise caution when considering these signs, as they are simply risk factors and do not necessarily indicate vulnerability. For example, if a client is disabled, it cannot be assumed that in the context of legal services they are vulnerable. A disability may have no impact on a person's ability to make informed choices and fully participate, even where they require assistance to be able to do so. Be wary of jumping to conclusions: take time to understand your client, assess their needs and how your services may need to be adapted⁶, and consult others where appropriate.

Given the complexity in identifying vulnerability, encouraging self-disclosure is crucial – and can be a better predictor of vulnerability than relying on signs and predictors. When a client instructs (or is seeking to instruct) you, make sure you ask the right questions (see more on this below), remind clients that anything they tell you will be treated confidentially, and that disclosure helps you to ensure they are fully able to participate in proceedings.

Part Two: Assessing how to meet your clients' needs

Questions to ask yourself

The checklist below provides examples of the types of questions you can ask yourself to ensure a robust assessment of client vulnerability:

- ✓ Have I encouraged self-disclosure and reassured the client of the confidentiality of information they provide?
- ✓ Have I spoken to relevant third parties to identify additional needs and vulnerabilities?
- ✓ Are there any health considerations that are contributing to making the client vulnerable?
- ✓ Do I need to provide information in large print/braille/audio/easy to read format? Do

5. Nose et. al. (2017) 'Psychosocial interventions for post-traumatic stress disorder in refugees and asylum seekers resettled in high income countries: Systematic review and meta-analysis'. PLoS ONE 12(2): e0171030. <https://doi.org/10.1371/journal.pone.0171030>

6. See competence 3.3 of the [Professional Statement](#).

I need to provide written text on a coloured background for someone who may have dyslexia/a visual impairment?

- ✓ Do I need to provide a sign-language interpreter/lip-speaker/deaf-blind communicator?
- ✓ Is extra time needed for conferences because my client takes longer to understand what I am explaining, due to a speech impediment/learning disability or because an interpreter is needed?
- ✓ Does an interpreter/carer/intermediary need to be present during client conferences? If so, does this require a bigger conference room or alternate meeting location?
- ✓ Are there any gender, cultural, dialectal, sexuality or other considerations e.g. when hiring an interpreter or expert witness?
- ✓ Am I able to provide a reader for clients with visual impairments? Do I need to provide a digital recorder/dictaphone/electronic note-taker?
- ✓ Are there sufficient checks in place to ensure that clients understand information provided?
- ✓ Has the client had sufficient opportunity to ask me any questions/inform me of concerns?
- ✓ Do I need to arrange for a clinical or psychological assessment?
- ✓ Should I consider offering the client flexible pricing structures or financing options?
- ✓ Should I arrange for remote access e.g. via Skype?
- ✓ Should I allow alternative ways of making complaints or other requests, rather than in writing?
- ✓ Have I provided my client with the details of organisations that can support them with any other issues/needs they have?

Questions to ask your client

As well as having your own mental checklist, ask your clients questions, tailoring your approach to the individual, in order to identify any needs and preferences.

Some clients may immediately disclose any issues to you, while others may not be so forthcoming or may even be unaware of factors that leave them vulnerable. Many people have undiagnosed conditions. Others simply do not want to or find it difficult to disclose personal or sensitive information. The initial discussion, where you are seeking to identify any potential indicators of vulnerability, should be handled sensitively. Look out for verbal and non-verbal signs that the client is uncomfortable or distressed, and adapt your communication accordingly.

To gather a full and clear picture of your client's situation, you may want to consider using a tool such as the IDEA tool below.

IDEA⁶

Impact – What happens and how bad is it? What does the vulnerability stop the client from doing, or make it harder for them to do?

This will provide you with insight into the severity of the vulnerability and its consequences.

Duration – How long has it been going on?

The duration of different situations and conditions will vary significantly. This information can inform decisions about the time a client might need to consider certain options or make decisions.

Experiences – Has it happened before? Could it happen again?

This will help determine whether this is a fluctuating situation or not, and will inform how you provide your services, how and when you may want to communicate with your client etc.

Assistance - Is your client getting any help?

Consider whether the client has been able to get any help, support or treatment. This can lead to discussions about obtaining any relevant medical evidence or other information.

This is only intended as an example, and other tools exist across a variety of sectors. You may wish to conduct your own research to find a tool that suits you best.

7. Money Advice Trust (2016) [Vulnerability: a guide for advice agencies. 12 steps for treating clients in vulnerable situations fairly](#)

Questions you could consider asking your client in order to best adapt your services to meet their individual needs include:

- **Do you have any particular requirements, such as needing help moving around or communicating?**

This could highlight a client's difficulties with mobility, dexterity, sight, hearing or speech problems. It may also raise the issue of a limited understanding of English, literacy, learning difficulties or mental health problems.

- **How and when would you prefer I communicate with you?**

Find out whether your client would prefer information to be provided orally, in written or an alternative format. This may again highlight issues around language, low literacy, sight or hearing impairments. Ask whether they would prefer to be contacted at a specific time or on certain days. This could reveal physical or mental health problems.

- **Could you tell me a bit more about your background?**

Do not ask probing questions like this without first considering whether the client feels sufficiently comfortable and open, and reminding the client that everything they say will be kept confidential. Asking your client to tell you about their background may alert you to any cultural barriers or considerations. For example, this information could influence the choice of interpreter.

- **Do you take any medication? [If so] How does this affect you?**

If health issues have already been highlighted, or you feel the client is sufficiently comfortable and it is appropriate to do so, asking this question can help you assess requirements related to physical and mental health. It may also lead to the identification of personal circumstances which may be a risk factor. For example, a client may disclose that they are taking anti-depressants to cope with trauma they experienced in their home country. Further exploring what impacts (if any) the medication has on your client will help you to build an understanding of the client's day-to-day experience, and their needs in terms of accessing and utilising your services.

- **Do you have any help to manage your money or bills?**

Again, you should use your discretion to determine whether any question you ask your client is appropriate in the time and circumstance. However, if the client discloses that they do have help in managing their affairs, this gives you the opportunity to explore the forms of support they are accessing, whether they have a carer or have any issues such as mental health problems or learning disabilities. This information could be pertinent to the case, as well as to your assessment of the client's needs in terms of your service provision.

Handling disclosures

A 2016 survey of people with mental health problems and financial difficulties⁸ explored consumer experiences of disclosure. It found:

- **People do not feel it is taken into account when they do disclose** – 35% said that despite having told the organisation about their mental health problems, they did not feel this was taken into account.
- **A lack of understanding of the importance of disclosing** – Where consumers did not tell providers about their mental health problems, 44% said they were not aware that this would make any difference to the way in which services were provided to them.
- **Prejudice/Being believed** – 21% said they did not feel they would be believed if they disclosed their mental health problem and 16% thought they would be treated unfairly if they disclosed their mental health problem.

These findings highlight the barriers to self-disclosure (albeit in the context of financial services) and, thus, the importance of encouraging clients to tell you if they have specific needs or requirements. Seek to actively encourage self-disclosure of any issues from the very start. Disclosure by the client themselves can be a much more accurate predictor of vulnerability than relying on risk indicators. Consider whether your chambers/organisation has a written policy on handling client disclosures, and ensure that clients and potential clients are easily able to access this, if so.

You should clearly explain to clients what happens with any information they give you, how this will be taken into account and recorded (if at all) and remind them of client confidentiality. When a client does disclose an issue, take care to ensure they feel this has been heard and will be appropriately considered. This reassures the client and builds trust. The TEXAS tool, developed by the Money Advice Trust and the Royal College of Psychiatrists, is a useful one to ensure that disclosures are handled correctly.

8. Money Advice Trust (2016)

TEXAS⁸

Thank the client. What they disclosed could be useful to everyone involved.

Explain how the information will be used and recorded, and who it may be shared with/disclosed to (if anyone).

Explicit consent should be obtained.

Ask the client questions to get key information (to help you better understand the situation).

Signpost or refer to other sources of help and support, where appropriate.

Good practice example

In the first client conference with her barrister Anna discloses that she struggles with mental health issues. The barrister recognises that this presents an immediate opportunity to explore Anna's wider circumstances and characteristics. The barrister asks Anna about the mental health issues she is struggling with. Anna states that she is schizophrenic and has episodes every morning. Whilst this is managed by medication, she feels unwell until approximately 10.30am each morning. The barrister thanks Anna for disclosing this, and explains it is useful to know so that the barrister can arrange for her to be contacted at a time when she feels at her best.

A record of this is made, and it is agreed that the barrister will only contact Anna after 11am. The barrister asks Anna to describe how she feels during an episode, which enables the barrister to build a full picture of how her mental health affects her on a day-to-day basis. Anna says she hears voices, which makes communication difficult and also sometimes affects her ability to think clearly. The barrister asks whether anything can be done to aid her communication. Anna says that written information is more helpful. This is recorded and it is agreed that Anna will be provided with written copies of advice and information.

The barrister asks if anyone helps Anna to attend appointments, manage her money or carry out day-to-day activities. She says she has a carer, who visits her twice a week. The barrister asks Anna if she consents to them taking the carer's details, so that they can be contacted in case of an emergency or if she were to become unwell. Anna agrees and the carer's details are recorded. The barrister wants to obtain Anna's consent today, when she is feeling well and has full capacity, so that it is clear what actions will be taken in the future if she presents as incapacitated.

** This example is based on a case study by the Money Advice Trust, adapted to the legal context.*

9. Ibid

Part Three: Risk factors to be aware of when assessing how best to meet your clients' needs

In the context of legal services, there are certain risk factors that are more prominent in relation to vulnerable migrants, as opposed to vulnerable clients generally. Some of the most common factors which you will need to be aware of include:

English as a second language/ those with little or no understanding of English

Ascertain as soon as possible whether a client struggles with English and will require an interpreter. If it becomes apparent in your first meeting with your client that they do require an interpreter, you could rearrange the meeting to ensure they have the support they need¹⁰. Even if a client's English seems good, they may be struggling to understand the advice you give them – especially legal terminology with which they may be unfamiliar. Ensure that they have understood the full extent of your advice at all times by summarising or asking them to summarise what has been said. You also need to understand their reading ability and consider whether written communications need to be translated.

Where language barriers exist, consider whether there are any cross-cultural communication issues that should be taken into account when communicating with your client. Refer to [Factsheet 5](#) for further guidance on issues of client communication, including cross cultural communication.

If your client is paying privately, you should consider whether they are eligible for legal aid, to include disbursements of fees such as interpreters' fees, and whether their best interests would be best served by a legal aid provider. You should also determine whether they can apply for exceptional case funding due to their vulnerability and difficulty understanding English (and therefore the law) – and inform the client of their options¹¹.

Asylum seekers

Asylum seekers are some of the most vulnerable individuals that require access to legal services, and research conducted by the SRA shows a desire within the legal sector for an improvement in the quality of services provided to asylum seekers. The report identified a number of 'focus areas' for the future, including being clearer on costs, meeting and considering all the legal needs of the client, communicating key client care messages and tailoring services¹².

10. Refer to the [Guidance on vulnerability](#) and the client journey document (Stage 3: "Receiving") for information on the types of considerations that may be required when hiring an interpreter.

11. Competence 1.4, threshold standard (b) in the [Professional Statement](#) expects barristers to be able to identify and advise clients of alternative sources of advice and funding available to them, as appropriate.

12. Solicitors Regulation Authority (2016) Quality of legal services for asylum seekers

Clear and simple communication with asylum clients, which is adapted to the individual's needs and preferences, is key to high quality service provision. When sending a client care letter, consider how you are best able to tailor it so that your client understands the key information, including on fees, and whether it should be translated.

If you are working with a client seeking asylum, be aware of potential health concerns. Many asylum seekers suffer from PTSD and other common and severe mental disorders, and it can be difficult to distinguish between 'expected temporary distress' and PTSD¹³. Where you suspect or know your client has health concerns, you may need to consider the need for a medical assessment. You may also wish to check with the solicitor and other third parties involved whether the client is receiving adequate support for any needs and take appropriate measures if not.

You should also be aware of cultural and language barriers, in addition to issues around social isolation/marginalisation and distrust of authorities¹⁴. Asylum seekers may be fleeing state persecution, violence or war, and this can result in negative perceptions of and a lack of trust in authority figures. Building trust and rapport is therefore especially important when working with asylum seekers and others who have suffered traumatic experiences.

Where an interpreter is required, ensure any necessary factors, such as cultural/dialectal/gender/sexuality/religious or other issues have been sufficiently considered. See [Factsheet 5](#) (Client care and communication) for advice on effective communication with vulnerable clients, tailoring your services and a consideration of cultural barriers/factors.

Modern slavery, torture and trauma victims

Victims of modern slavery often struggle to disclose their history, sometimes due to a lack of recognition that they are in fact a victim, and other times because they feel complicit in their own situation. The impact of experiencing modern day slavery can be substantial and long-lasting, and victims will often require support with practical, psychological and emotional issues, including with trauma. Building trust and rapport is therefore key to effectively managing these vulnerabilities.

Be alert to indicators that a person could be a victim of modern slavery and/or torture. Victims may be referred to the National Referral Mechanism (NRM) for protection and support. See [Factsheet 3](#) for further guidance on identifying victims of modern slavery and responding to their needs. A list of organisations that provide support to victims can be found in [Annex 1](#).

13. Nose et. al. (2017) 'Psychosocial interventions for post-traumatic stress disorder in refugees and asylum seekers resettled in high income countries: Systematic review and meta-analysis'. PLoS ONE 12(2): e0171030. <https://doi.org/10.1371/journal.pone.0171030>

14. Ibid

Victims of domestic abuse

Victims of domestic abuse may display similar indicators of trauma to victims of modern slavery e.g. fearfulness, reluctance to disclose information, physical wounds or bruising. Domestic violence includes any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between individuals aged 16 or over who are, or have been, intimate partners or family members. Abuse can be psychological, physical, sexual, financial or emotional, and includes honour-based violence, female genital mutilation (FGM) and forced marriage¹⁵. If your client is a victim of domestic violence they may inform you directly, enabling you to explore the issues and any needs arising from these. However, domestic violence is a notoriously under-reported crime and clients may be reluctant to disclose any abuse they have suffered.

Resolution, an organisation of lawyers and professionals specialising in family law, has designed a [Domestic Abuse Screening Toolkit](#) which you may find useful when meeting with a client who is a potential victim. It provides examples of questions you can ask your client, information on the characteristics and manifestations of abuse, and details of organisations to which you could direct your client.

Drug and/or alcohol use

If you suspect your client is using drugs and/or alcohol, this can be a difficult topic to address and you should do so sensitively. Some clients will openly admit to their use of substances, but others may seek to hide it. Explore the client's ability to understand and process information, and take informed decisions.

If you suspect a client is intoxicated, you should not take their instructions. Drug and alcohol use can lead to temporary loss of capacity. If you suspect your client lacks capacity to instruct you and/or make decisions, refer to [Factsheet 6](#) for guidance.

Some drug and alcohol users have carers. If your client requires a carer to be present, consider how this will impact the way you provide your services (e.g. whether you will need to arrange for a bigger conference room).

Mental health and learning disabilities

People with certain mental health issues or learning disabilities are often reliant on family, friends or carers to help them in their day-to-day lives, and may require a third party to attend client conferences. If they have had a clinical or psychological assessment, you may be able to obtain a copy of this. This can help you to understand their needs and support them. If they have not had a recent assessment, you may want to consider whether one should be obtained.

Offenders and ex-offenders

15. <https://www.gov.uk/guidance/domestic-violence-and-abuse>

Those with a criminal record may be vulnerable for many reasons, and this is often exacerbated by the difficulties in being able to access legal advice when in prison. Anecdotal evidence from our engagement with frontline organisations suggests that even where prisoners do manage to access legal advice, they can sometimes struggle to advance their case, or to challenge removal orders. If a client of yours has been in prison, check that they are fully aware of the details of their case, as they may not have received good quality legal services in the past. They may also lack trust in legal professionals as a result of bad experiences, and building a rapport and trust is key.

Summary of key points

- Identifying vulnerabilities can be challenging and you should be aware of potential indicators of vulnerability.
- The identification of vulnerability and assessing your client's needs is a continuing process. Vulnerabilities and needs can change and you should be alert to changes in your client's behaviour.
- Familiarise yourself with the types of questions you need to be asking yourself when making an assessment, as well as those you could be asking your clients.
- Actively encourage disclosures and ensure clients are reassured that any disclosure they make will be handled sensitively and appropriately.
- Refer to [Annex 1](#) of this guide and direct your client towards further support, if needed.

Further information/ Key resources

- ▶ Bar Standards Board (2016) [Immigration Thematic Review](#)
- ▶ Legal Services Consumer Panel (2014) [Recognising and Responding to Consumer Vulnerability](#)
- ▶ The Advocate's Gateway (2015) [General Principles from Research, Policy and Guidance: Planning to Question a Vulnerable Person or Someone with Communication Needs: Toolkit 2](#)