Kellands Vulnerable Clients Policy

Contents

1. Introduction

This document is intended to provide guidance in respect of identifying and dealing with Vulnerable Clients, as well as give support in related areas. The guidance has been designed to support investment consultants and support teams. Reference to "Kellands" ["the firm"] includes:

- Kellands (Bristol) Limited
- Kellands (Gloucester) Limited
- Kellands (Hale) Limited

Any examples provided are purely to support understanding and should not be considered to be exhaustive as this is not the intention. All representatives of the firm are required to exercise their personal professional judgement when assessing client vulnerability.

The firm ensure that all of our people, regardless of their role within the firm, understand and adhere to our procedures and processes when dealing with and assessing the level of vulnerability for any new or existing clients. This is in order to meet both of our regulatory and moral responsibilities, as well as demonstrate a duty of care and fair treatment of clients. In cases where the firm deals with vulnerable clients the firm expects our people to exercise a higher degree of care, appropriate to the individual needs of the client. We take our duty of care towards all of our customers very seriously and will always put our client's interests uppermost.

Dealing with vulnerable clients continues to be very high on the FCA's agenda.

The content of this document is unlikely to be exhaustive, nor is this the intention. This guidance should not be relied upon in isolation and should be considered in conjunction with additional internal processes and external sources of reference which are available, including those within the public domain. The guidance will be subject to review and update periodically, typically annually.

2. Version control

- Version: 7
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- Owner: Paul Bryant
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- Status: Live

3. Background

Financial Conduct Authority's (FCA) core principle for business 6 confirms our regulatory responsibility to Treat our Customers Fairly (TCF) In addition to our TCF obligations the regulator has introduced a Duty of Care Policy our policy should be read in conjunction with our TCF policy and procedures:

"A firm must pay due regard to the interests of its customers and treat them fairly"

Vulnerability can occur quickly and at any stage within a business relationship between the firm and the individual concerned. Vulnerability can fall into any one or more of the following four categories:

- Health
- Resilience
- Capability
- Life events

Some of these categories could be difficult to identify immediately and therefore we should be aware of their potential presence at any time during the business relationship with our clients. Characteristics associated with the 4 drivers of vulnerability:

Health	Life Events	Resilience	Capability
Physical disability	Retirement	Over-indebtedness	Poor literacy or numeracy skills
Addiction	Bereavement	Low savings	Poor English language skills
Hearing or visual impairment	Redundancy	Low emotional resilience	Poor or non-existent digital skills
Severe or long-term illness	Domestic abuse including economic control	Inadequate income, outgoings exceeding income or erratic income	Low knowledge or confidence in managing finances
Mental health conditions	Relationship breakdown		Learning difficulties

Low mental capacity or cognitive disability	Caring responsibilities		No or low access to help or support
Implications of short stay in hospital and effect on finances / family	Other circumstances that effect peoples' experience of financial services, e.g. leaving care, migration or seeking asylum.		Inexperience in financial matters

It is important to understand that characteristics of vulnerability are likely to be complex and overlapping. For example, a life event like a relationship breakdown or bereavement may lead to further vulnerability such as mental ill-health or low resilience. This may be made worse if the consumer has low or limited capability to engage with financial services or to manage their finances. Vulnerabilities may change and their degree of angst will change from individual to individual. For example stress / loss of job / bereavement could affect people differently and for differing terms.

We should be are aware of their requirements under the Equality Act 2010. Groups of consumers with certain protected characteristics may have, or be more likely to have characteristics of vulnerability, for example older consumers. In addition, the driver of vulnerability, health, largely overlaps with the protected characteristic 'disability' under the Equality Act. The recent pandemic has highlighted how certain sectors of society are affected by Covid and more prevalent than with others.

We should also understand how vulnerability can be perpetuated or worsened by our own actions, or inaction. For example, if a consumer loses their job or falls ill and is not offered appropriate forbearance measures on their mortgage (where this would be in the customer's best interests taking into account the overall circumstances), this could lead to greater stress and anxiety. In turn, this could lead to the customer taking actions that may create more harm, such as borrowing from higher-cost sources in an attempt to address the payments shortfall. During the pandemic 52% of all UK adults showed signs of vulnerability to some degree. This was mainly amongst the younger adult population where between 18 and 34 they were working but not sure how secure their income was likely to be and had a mortgage and so felt vulnerable. Our process will ensure that throughout our staff are trained to identify times where a client is likely to appear vulnerable.

- Changes in client behaviour – Premiums are stopped for no apparent reason(s); Regular request for one off lump sums from single premium investments; High levels of withdrawal from income drawdown contracts and extreme changes to risk and capacity for loss.
- Awareness of phrases used by client during meeting; – Request to premium break; I don't use email; and I don't understand report.
- Physical Signs – Client was agitated during the meeting; Mention of taking medication / treatment; repeating themselves; poor understanding of basic facts and cannot retain / recall data / knowledge.

Research published by the FCA revealed that some vulnerable consumers seeking help from financial services providers are meeting 'a computer says no' approach, putting them at risk of further detriment. FCA research also revealed:

- The response of our industry, either on a customer helpline, or in face-to-face scenarios, are crucial to customers' experiences and outcomes.

- Not all employees need to be experts but they need to know where internal expertise lies and when to refer consumers.
- Most problems relate to poor interaction or systems.
- Some consumers are overwhelmed by complex information and find it hard to distinguish between marketing and important product messages.
- In some firms there is inaccurate or overzealous approach to rules, such as those around data protection or affordability, preventing firms meeting the needs of vulnerable consumers.
- We do not intend to provide client with a one size fits all procedure that will be detrimental to our ongoing relationship. Our contact and communication strategy is well documented and appropriate to our staff based on their individual needs and requirements.
- The firm is in the process of creating a vulnerability audit ensuring all staff are aware of our requirements but more importantly all staff are adhering to these policies.

Having identified that a client could be subject to vulnerability they should be dealt with professionally, with empathy, understanding, patience and most importantly respect. Should we feel that a client, or potential new client, is so vulnerable that they could harm themselves or others, then this should be escalated to Senior Management for them to inform appropriate authorities.

The FCA's guidance considers:

- The potential versus the actual degree of vulnerability is more about good business practices such as 'Know your client' (KYC) and Treating Customers Fairly (TCF) and how you take account of clients, and deal with them, rather than labelling them as being vulnerable. This will become more evident when you include our duty of care policy which overlaps all of the above principles.
- The regulators appreciate that there will not be an 'overnight' change to approaches and behaviours, however it is important to be able to demonstrate that this forms part of ongoing learning and development (CPD) showing an appetite for positive change and best endeavours.
- The FCA are focused upon what action(s) they actually put in place in terms of the practical application to support potentially vulnerable clients rather than theoretical written policies.
- Ensuring consumers have an appropriate degree of protection is central to what the FCA does.
- The FCA expect vulnerable consumers to experience outcomes as good as those for other consumers and receive consistently fair treatment.
- Vulnerability impacts upon consumers' abilities to make informed financial decisions.
- Characteristics of vulnerability may result in consumers having additional or different needs and may limit their ability or willingness to make decisions and choices or to represent their own interests.
- The FCA expect firms to provide their customers with a level of care that is appropriate given the characteristics of the customers themselves. The level of care that is appropriate for vulnerable consumers may be different from that for others and we should take particular care to ensure they are treated fairly.
- The FCA want to see the fair treatment of vulnerable customers embedded as part of a healthy culture throughout firms, not just on the frontline but also in areas such as product development. The senior management team should create and maintain a culture that enables and supports staff to take responsibility for reducing the potential for harm to

vulnerable customers. Fair treatment of vulnerable customers should be embedded throughout the whole customer journey.

4. Vulnerable client assessment

This is not a 'form'! Instead, this is the requirement for an adviser to exercise their 'professional judgement' in order to consider whether the client meets the definition of a vulnerable person.

As part of a client meeting an adviser should look out for conditions and circumstances, examples of which are provided within these guidelines, which could indicate that a client would be considered to be vulnerable client.

When assessing whether a client would be considered to be a vulnerable client, the types of questions an adviser should ask themselves are:

- In your professional opinion and exercising your judgement, having met the client and knowing their circumstances, does the client's medical / health condition limit their ability to make sound and informed financial decisions or understand any recommendation that you may make?
- Could we be accused of putting the client under pressure to make decisions due to their current condition? Whilst we wouldn't, this might be their plea, and clearly FCA, FOS etc. would take a dim view of this and find against us in respect of any future dispute.
- Could a client's current state of mind or circumstances influence a decision at this time that could prove not to be in their best interests in the longer-term future? In this case it may be better to delay any review until they are recovered, or at least the current condition has improved, or is not as prominent on their mind and they are able to focus on other things, i.e. financial, matters. Clearly this depends on the situation, circumstances or condition in question.
- At no time should the staff member confirm to the client that they are being treated as vulnerable as this could cause further angst to the individual concerned.
- However, it is good business practice to identify vulnerability at earliest stage possible to ensure the client is dealt with correctly. This could be offering more meetings to allow time to make decision or dissect the KYC meeting into more than one session again to avoid client overload unnecessarily.

As part of a vulnerable client assessment the adviser should consider the client's knowledge and experience of financial matters, as well as proposed solutions to meet their objectives and sense check these to establish the client's level of understanding before agreeing to proceed.

Further examples and guidance on how to assess and possible solutions for dealing with vulnerable clients are provided below.

5. Recognising potential customer vulnerability

Definition:

'A vulnerable consumer is someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care'

This is a broad definition and to put it into context it means vulnerability could:

- Manifest itself in either a physical or medical form
- Incorporate a condition which is short lived; longer term or permanent
- Encompass an emotional or financial shock (e.g., bereavement or a drop / loss of income)
- Incorporate more than one element (multi layered) and could fluctuate over time.
- Can develop as quickly as it could go!
- Not everyone with the same vulnerability will behave in the same manner

The definition suggests it could affect anyone, confirming this will impact on numerous clients seeking or in receipt of financial advice. In many cases there is an element of subjectivity on the adviser and a requirement for them to exercise their professional judgement when attempting to make an assessment. The firm needs to be mindful of the nature of any vulnerability the scale and impact on the client's judgement and wellbeing and whether the vulnerability is likely to be long term or a brief issue that can be taken into account when proposing any financial solutions for our client.

The FCA's analysis shows that it is not just those people who experience sudden life-changing event, shock or change in health that firms should consider when developing vulnerability strategies. Although as a firm we do not produce any financial products for the market it is our responsibility that we ensure that all strategies we use have been scrutinised to ensure we understand where they could be inappropriate for individuals with forms of vulnerability and what alternatives are available and therefore more suitable. Likewise, we do not market to individuals wholesale and are very specific with any target marketing taking into account clients of a vulnerable nature should they fit in any such category. – other examples are provided below:

- Physical disability / restricted mobility / brain injury
- Sensory issues / Hard of sight or hearing
- Learning difficulties
- Low basic skills, literacy, numeracy and financial capabilities
- Severe or long-term illness
- Mental health problems / depression / anxiety / bi-polar disorder
- Dementia / loss of mental capacity and / or memory
- Resource limitations / Low financial capability
- Poor financial situation / Low income / Debts
- Caring responsibilities (including operating a POA)
- Heavy reliance on others for support / care
- Being 'older old' for example over 80, although this is not absolute (may be associated with cognitive or dexterity impairment, sensory impairments such as hearing or sight, onset of ill-health, not being comfortable with new technology)
- Being young (associated with less experience)
- Change in circumstances (e.g. job loss, bereavement, divorce)
- Communication difficulties – Lack of English language skills, English not being first language, limited speech, etc.
- Non-standard requirements or credit history (e.g. armed forces personnel returning from abroad, ex-offenders, care-home leavers, recent immigrants)
- Divorce and separation
- Bereavement
- Niche requirements / health conditions / legal status

Please note the list provided may not be exhaustive nor is this the intention.

In some cases, it may be quickly apparent that a potential vulnerability factor exits, for example someone with a physical / sensory disability. Other risk factors are likely to be hidden and can only be identified following more in-depth assessment, questioning and client interaction (such as identifying a long-term illness where the use of appropriate questions enable the client to explain their medical background. Therefore, it is important to note that many people in vulnerable situations may not diagnose or describe themselves as ‘vulnerable’ and we would need to exercise our professional judgement. We need to be mindful that the nature and scale of vulnerability has been accessed correctly as well as the likely length of impact on the individual concerned.

6. Size of the issue

In May 2016 Just Retirement estimated that in the region of 25% of the population – 1 in 4 clients – could be considered to be a vulnerable this has increased post pandemic in 2022 to 48%. given the range and extent of vulnerability. To illustrate the scale of this subject we should consider the following:

- One in seven adults have literacy skills that are expected of a child aged 11 or below
- Just under half of UK adults have a numeracy attainment age of 11 or below
- Almost half of adults do not have enough savings to cover an unexpected bill of £300
- Dementia affects 1 person in 6 over 80

As an industry, we usually identify vulnerability as physical disability or impairments, severe or long-term illness, mental health problems etc.

An individual’s level of potential vulnerability will change over the course of their life, for example should they experience the distress of losing a close member of their family this would typically have a high initial impact upon them emotionally, which may improve over time. Similarly, if a client experiences a serious potentially life-threatening illness, their level of potential vulnerability is likely to reduce as they recover from the medical condition. A vulnerable client assessment is not a one-off exercise and this should be ongoing.

The personal impact of the Covid pandemic on people’s lives, such as job insecurity, money worries and concerns over their own, or members of their family’s health, will have the potential to contribute to detrimental mental health issues and increase levels of vulnerability.

7. Indicators

- Heightened stress levels due to difficult, or different, personal circumstances
- Increasing time pressures due to additional responsibilities
- Increasing pre-occupation (‘brain is elsewhere’) limiting their ability to manage
- Processing power and ability decreasing due to competing pressures, for example due to the side effects, or emotional toll, of receiving medical treatment
- Lack of perspective especially when experiencing something for the first time, not fully understanding the broader implications; being unable to make comparisons, or see the ‘bigger picture’

- Changing attitudes towards taking risks; people often become more ‘reckless’ and/ or careless when under stress.
- Poor understanding of technology

Other examples may be:

- Contributions stopping suddenly
- Complaints due to poor understanding
- Late or missed payments
- Regular unarranged overdrafts and charges

Additional triggers may occur during client interaction and include example phrases such as:

- “I can’t pay or afford this”
- “I’m having trouble paying”
- “I can’t understand the letter you sent me”
- “I can’t hold on all day”

We should also be on the look-out for things like:

- Shortness of breath or signs of agitation
- Asking for repetition (a sign that the customer is not retaining information) or to slow down
- Signs that the consumer has not understood, signs of confusion or that they have difficulty in understanding information provided to them
- Mention of medication
- Different actions / change of character
- Poor memory and powers of recall
- If working with more than one person – is there a potential for any conflict of interest or undue influence?
- Inability to confirm understanding of proposals and solutions
- Changes in circumstances which might lead to vulnerability
- Does the particular need / objective align with what an adviser would typically expect to provide advice on? (e.g. client making gifts when there is a debt due)
- An indication or statement from the client someone else looks after aspects of their finances or typically involved in their decision making
- Desperation or unexpected, unusual actions / requests, e.g. to access funds
- A person appears unable to make decisions independently
- Retention of information is limited and confused
- The client cannot process information coherently
- The individual cannot communicate the information back to the adviser
- The client has issues with their sight / hearing
- The questions being asked by the client are irrational or not related to the present conversation
- The client is unable to clarify the salient points of any meeting
- The client has a poor time for retaining information or interest in the topic discussed
- They appear to be easily distracted

If we identify a potential ‘red flag’ and the consumer is not already considered to be ‘vulnerable’, we may then, for example, approach the next of kin or another independent third party, who may be able to assist the client e.g., be present at client meetings.

8. Mental capacity

The ability to make decisions is to be treated as both 'decision' and 'time specific'. This means a client may be able to make a simple decision (for example paying a bill) but may not be able to make a complex one or one that carries a significant risk. Whether someone is able to make the decision required of them is likely to be dependent upon:

- Them being able to understand the information relevant to the decision
- Whether they can retain the information
- Whether they can use or weigh up the information in the decision-making process whether they can communicate their decision

9. TCF best practices

All consumers, including those in vulnerable circumstances, need to trust that they will experience the following outcomes when they approach an intermediary business for guidance

The primary responsibility to assess whether a client is considered to be vulnerable, or not, rests with the adviser on the basis that they are the initial point of contact and will conduct meetings with the client, as well as engage with them to deliver financial solutions and recommendations. During the course of their interaction with a client the adviser should consider the following and they may need to think of different approaches or solutions to ensure that they are able to deliver upon the expectations where a client is considered to be vulnerable:

- Having clear and easy to understand products or services that do not contain surprises that may only become apparent when a crisis strikes.
- A choice of ways of communicating to be available whenever the client needs to make contact and for these to be designed in an inclusive way so that they are clear, easy to understand and meet consumer needs.
- Feeling that the firm will treat them as an individual and are assured that they won't face the 'computer says no' response just because circumstances do not fit the standard mould, and will not rely on outdated assumptions or automated processes.
- Knowing that, should they experience a sudden change in circumstances requiring a flexible approach, we will offer a tailored response.
- Being able to talk to someone who will take the time to listen, who is flexible enough to let the conversation take a natural course, and who is sufficiently trained to spot signs of vulnerability and refer on to a specialist where necessary.
- Being referred on to someone who has the authority and discretion to take a tailored approach to the situation and offer flexible solutions. This may be someone who can bring their expertise to help plan finances with a good awareness of specialist sources of help and advice if necessary, and who will refer if appropriate in a way that makes that referral easy.
- Feeling confident that the firm encourages disclosure, that they will work with the client in their best interests, working collaboratively to find solutions, and will use any information disclosed by the client for positive outcomes to meet their needs.
- Knowing that if clients disclose information about their needs, that the information will be recorded properly so that they do not have to repeat it every time they make contact across all departments of the firm.
- Knowing that the firm will proactively contact clients if they suspect they may be having financial difficulties.
- Be confident that if the firm spots suspicious activity which may signal abuse or fraud and that we will take appropriate action.
- If the client is recently bereaved, or holds a power of attorney or a third-party mandate, they will receive consistent advice and treatment.

Digital exclusion can also be a major issue particularly in relation to older clients who may be intimidated by the reliance on computer-based communication. We will seek to allow flexibility in the means by which we communicate with clients.

10. Solutions and actions

Where an adviser initially has reason to be believe that the client may be vulnerable and an assessment is made, but the decision in his professional opinion is that the client is not vulnerable, the outcome of the assessment should be recorded in order to demonstrate that this has been considered. The adviser should reflect the situation on the meeting notes / fact find and mirror this within the client report. As an example, 'you have recently had an operation / been diagnosed with XYZ condition but this did not affect your ability to make informed and educated financial decisions / understand the plan / recommendation… We discussed whether you would like to have a member of your family at our meeting however you declined to have other people present to support your decisions… etc.'

Where an assessment is made and the client is considered to be vulnerable the adviser should agree a solution with the client. Again, the outcome should be reflected within meeting notes, fact find and client report – this will also confirm to any future deputy, new adviser or third party, the client's condition or circumstances and how this was dealt with for future reference and dealings. The most likely solution would be to have an educated and informed third party at the meeting and record the fact that they were present and the level of their involvement, confirmation of understanding etc.

Suggested solutions / actions for dealing vulnerable clients may include:

- Trusted Third party or other personal adviser present at meeting – family, friend or another personal adviser such as trustee, attorney, solicitor or accountant.
- Ensure that the communication, client interaction and presentation of advice or solution is tailored to the particular client's needs, circumstances and situation.
- Postpone or delay delivery of advice or recommendations until such time as the situation or circumstances resulting in vulnerability have improved or been resolved.
- Limit recommendations to simple, low risk financial solutions and products.
- Offer the client a choice of meeting venues where they may be more comfortable, feel at ease and not under pressure. This could include for example, access or facilities for disabilities.
- A choice of advisers where a different one may have the experience or ability to deliver a more empathetic style or approach which may be better suited for the client – care needs to be taken here to ensure that should more than one adviser meet with the client that they do not feel under pressure or 'ganged up on' to make decisions.
- Offer a bespoke service proposition, either initial and / or ongoing to suit the client's needs, situation or circumstances – clearly this is dependent upon clear, fair and reasonableness of fees as well as considering affordability and commercial objectives for the firm.
- Large print, for hard of sight.
- Longer time frame to make up your mind.
- Offer the use of third party where appropriate for example help train them on Microsoft Teams; Debt consolidation through age concern; POA in attendance etc.

On occasion one or more of these solutions may be appropriate depending upon the circumstances.

This list is unlikely to be exhaustive, not is this the intention, and there may be other more suitable solutions depending on reasons for being considered potentially vulnerable, e.g. an interpreter for those that have a limited understanding of the English language.

There may also be occasions where the adviser may need to walk away completely, e.g. if the adviser thinks that the client can't understand the advice or product at all, or read supporting literature, as we act under English law and UK legislation, i.e. the client needs to be able to read and understand Terms and Conditions.

11. Internal processing, notifications and escalation

Where potential vulnerability is identified it is the responsibility of the person who is communicating with the individual at the time to:

- Escalate potential concerns to their respective line manager.
- Record the client meeting notes on enable and classify the client on the system that they could be vulnerable. This ensures all staff that come into contact with the individual are aware of any issues prior to making any future contact.
- A client's vulnerability could mean that a bespoke service maybe required for example in the event of poor eyesight a larger type suitability report may be necessary.
- Clients identified as one of a vulnerable nature will be offered more time to make any decision and the offer of other family members in attendance during all meetings will be made.
- Clients will be asked to clarify information received to re-affirm their understanding of the proposals recommended.
- Staff are trained not to finish any sentences on behalf of the client and not to assume the client understands the proposals recommended.
- Client of a vulnerable nature should always be offered the opportunity of a family member in attendance or duplicate letter of recommendation must be provided to Next of Kin or any POA subject to Data Protection Legislation and with the client's consent.

Where a complaint is received by the firm from any client that has been categorised as a vulnerable client the complaint will be not only reviewed for appropriateness and correct advice, but also ensuring that the procedure and policy pertaining to vulnerable clients has also been adhered to by the person concerned.

12. Dealing with Powers of Attorney

A Power of Attorney (POA) is nominated to act on another person's behalf if that person has an accident, illness or a degree of incapacitation or vulnerability which means they are no longer able to make their own (financial) decisions.

As life expectancy increases and people are generally living longer, there will be more cases where people's minds deteriorate before their bodies, meaning decisions have to be made on their behalf.

It is best practice as part of strong financial planning for all clients to be encouraged to have a valid Lasting POA (and will) in place.

Vulnerable clients may have an attorney appointed to make financial decisions and act on their behalf.

In terms of due diligence and record keeping, advisers should retain a certified copy of the original deed of the POA. In addition, all individuals that have access and / or control over assets, funds or money should be subject to verification of identity checks and certified copy documents obtained.

Problems may arise for financial advisers when an attorney makes decisions about money or property belonging to a client, which the adviser feels is not in the client's best interest. Advisers have a duty of care and should be very wary about carrying out actions which they feel is not in the best interest of their client. Considering the regulatory and legal repercussions in this respect, concerns which are identified should be escalated to Compliance.

POA discussions with clients provides advisers with opportunities for referrals (attorneys) as well as growing professional connections (solicitors).

13. Discretionary Fund Management

Making a POA is a way of giving someone legal authority to manage affairs. Since the POA is legally binding on the attorney they do not have the authority to 'give away' their legal responsibilities and obligations to another third party, e.g., a Discretionary Fund Manager (DFM). In the case of DFMs, the investment manager will make financial decisions on behalf of the client, however an attorney does not have the legal authority to pass on their responsibility to make financial decisions.

In order for an adviser to recommend DFM to an attorney the POA deed must include explicit permission to outsource investment decisions. Guidance set out by the Office of the Public Guardian (OPG) makes it clear that express instructions should be given by the POA to invest or continue investing in a DFM scheme. Without this permission, the attorney would need to apply to the Court of Protection for retrospective consent, even if the attorney delegated investment decisions before the OPG update its guidance September 2015. An example of the wording that should be included within the POA to demonstrate that the necessary express authority is in place is:

"My attorney(s) may transfer my investments into a discretionary management scheme, even though this means that investment decisions will be made by the managers of the scheme and my investments will be held in the name of the managers of the scheme or their nominees. Alternatively, where prior to my loss of mental capacity to make financial decisions, I already had my investments managed in a discretionary management scheme, I want the discretionary management scheme to continue, even though this means that investment decisions will be made by the managers of the scheme and my investments will be held in the name of the managers of the scheme or their nominees."

It is not common practice for such permission to be included within the POA therefor the adviser should not assume. If this wording is not included within the POA and a DFM is considered the most suitable advice for the client, then the attorney should be recommended to take legal advice, e.g. to amend the content of the POA deed, before the advice is provided and solution implemented.

An adviser's recommendation for a DFM where a POA is in operation could be open to a regulatory breach or legal challenge (particularly if investments do not perform) if it is not clear from the legally binding deed that investment decisions can be outsourced. Therefore, any such recommendation would be considered to be unsuitable. The DFMs stance would typically be that the adviser is responsible for the DFM recommendation. Therefore, the DFM may well accept the application for business since the suitability of the advice is not their responsibility and this sits with the adviser. Advisers should be familiar and understand their own responsibilities and obligations for TCF and suitability, rather than attempt rely upon a DFM's internal policies and procedures to reject applications for cases where the necessary express consent is not in place.

14. Long Term Care

Financial planning advice on Long Term Care (LTC) is considered to be a specialist area requiring relevant expertise. If an adviser identifies a client with a need or objective of LTC planning they should refer to a specialist within the business holding the CII / PFS CF8 industry recognised qualification (or equivalent), if they do not already hold an appropriate qualification themselves. Ideally the specialist should also hold formal accreditation, e.g. SOLLA (Society of Later Life Advisers). The appointed specialist would then be in a position to carry out a review of the client's circumstances, future objectives and needs, in order to be able to conduct a shortfall analysis, undertaking a comprehensive review of the market for suitable solutions and present these in writing, supporting the implementation if it is agreed to proceed.

LTC is a subset of social care and often refers to permanent residential or nursing care and it may also include domiciliary care at home. Different organisations provide this range of care, including local authorities, the NHS and private and voluntary organisations. The care includes ongoing assistance with some of the most basic activities of daily living such as washing, dressing and eating. The need often comes from disability, chronic illness or cognitive impairment, i.e. vulnerability.

There is a lack of consumer awareness around the need to save and the substantial cost of care may result in considerable consumer harm. As people live longer, but not necessarily in good health, long term care needs to be considered and funded by individuals. It is estimated that one in three women and one in four men aged over 65 will require long term care at some point in their lives and there is poor consumer awareness about the need to save for long term care. People do not plan enough financially for old age and are often unfamiliar as to the level of funding the Government will provide to those who require assistance. The cost of long-term care can be substantial, with expectation that it will increase with time and depending on the level of care required. Regulated advice is an important aspect of financial planning for later life, not only for improving consumer outcomes but also mitigating the financial impact of poor planning.

Financial advisers can play an important role in helping consumers to plan ahead. Advisers may be regarded as trusted third parties and well placed to 'nudge' consumers to consider their later life needs when providing advice at all life stages. This may include signposting to risks of potential future ill-health, saving for longer periods of retirement, critical illness and need for long term care or considering the need for third party access. Conversations of this nature can be difficult, and require a high degree of empathy. Advisers may also be approached at a point when urgent decumulation is required to fund long term care, and encounter vulnerable clients and family members.

LTC is not an area that the intermediary market has engaged with that much to date and as such there are fewer examples of good practice when compared to other areas of financial planning. It is widely considered that there is poor access to guidance or advice about LTC products and limited availability of insurance products and savings vehicles for LTC.

The off-putting nature of this topic and human behavioural tendencies are likely contributors towards a lack of consumer interest and awareness around long-term care. Consumers may ignore the need to save, on the optimistic assumption they will not need long term care. Consumers often underestimate their own life expectancy and do not adequately consider the risks that ill health or loss of mental capacity will have on their future personal circumstances. Furthermore, there is currently little incentive for consumers to save towards the future cost of long-term care. It is likely that the lack of mass consumer engagement and demand for pre-funded long-term care products impacts on the lack of supply. It is difficult for providers to design products if future experience including government policy cannot be predicted. This creates a circular situation where it is neither commercially viable nor profitable for providers to innovate. At the present time, stimulating significant market demand in the absence of future policy direction and consumer engagement appears very difficult unless there is an element of compulsion.

Competition and Markets Authority's (CMA) consumer research indicated that many people find it challenging to make decisions about care under the stressful and time pressured circumstances which generally apply, i.e. potential client vulnerability. Even when good information is available people rarely seek it or engage with it. Many people do not seek more information and in many cases, they are confused by the social care system and funding arrangements, and do not know how to find and choose between homes.

The cost of long-term care in England is substantial, averaging approximately £28,000 p.a., reaching £38,700 p.a. if nursing care is required. It is likely that this cost will continue to increase over time. Without access to clear care-related information consumers may experience poor outcomes, harm or vulnerability as a consequence of inadequate financial planning or provision for long term care.

15. Sources of reference and evidence

- Experience of internal compliance resource
- External compliance consultants and product providers
- Industry commentary and press coverage
- FCA FG21/1, Handbook and TCF principles

https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf

- FCA video meeting March 2022 relating to Vulnerable Clients and Best Practices for firms
- IFAs dealing with Powers of Attorney (POA)

https://www.ftadviser.com/regulation/2016/11/02/concerns-over-power-of-attorney-issues-on-the-rise/
https://www.financial-ombudsman.org.uk/publications/technical_notes/power-of-attorney.html
https://www.professionaladviser.com/retirement-planner/feature/1736471/the-powers

- Discretionary Fund Management

https://www.ftadviser.com/regulation/2016/12/14/power-of-attorney-guidelines-catch-out-advisers/
https://www.legalmatters.co.uk/professional-partners/lpas-and-clauses-to-enable-discretionary-management-of-funds/
https://www.step.org/sites/default/files/Policy/Deputyship_Guidelines.pdf
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- Long Term Care

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