

## **GUIDANCE NOTES: VULNERABLE CONSUMERS**

### **Regulator: Costs Lawyer Standards Board**

**Effective date: 11 October 2016**

This guidance note has been issued by the Costs Lawyer Standards Board (“CLSB”) to assist Costs Lawyers authorised and regulated by the CLSB (“Costs Lawyers”) in recognising their responsibility to a vulnerable consumer and managing increased expectations. Reference herein to a consumer is reference to a client.

#### **Introduction**

Objectives set out in the Legal Services Act 2007 include improving access to justice and protecting and promoting the interests of consumers of legal services. It is important therefore that Costs Lawyers address the issue of the vulnerability or potential vulnerability of consumers to ensure that their services are accessible to all.

#### **Regulation and other prevailing legal requirements**

The Costs Lawyer code of conduct sets out the seven principles of regulation, these include:

- Principle 1. Act with integrity and professionalism.
- Principle 3: Act in the best interests of your client.
- Principle 4: Provide a good quality of work and service to each client.
- Principle 6: Treat everyone with dignity and respect.

Principle 6.3 requires a Costs Lawyer to *“make reasonable adjustments for those with a disability to ensure they are not at a disadvantage in comparison with those without a disability”*.

Under the Equality Act 2010, businesses providing services to the public have a duty to anticipate and make reasonable adjustments so that someone who is disabled is not disadvantaged. Examples of reasonable adjustments include:

- A Costs Lawyers office being accessible (door width, step free entrance) or in the alternative arrange a meeting place with appropriate access.
- Arranging for a sign language interpreter during face-to-face meetings with a client who is deaf.
- Arranging for key written documents e.g. client care letter to be made available in braille or by audio recording for those visually impaired.

Under the Mental Capacity Act 2005 (“MCA 2005”) Costs Lawyers have to question whether a prospective or current client has the required capacity to instruct them. It is necessary for a Costs Lawyer to consider what it means to act in the best interests of a client who may lack capacity. In the event a Costs Lawyer believes a client lacks capacity, they should assess their capacity prior to taking any instructions, taking into account the principles set out in

the MCA 2005. There may be a need for a client to have the safeguard of an IMCA (Independent Mental Capacity Advocate) or IMHA (Independent Mental Capacity Advocate).

The MCA 2005 provides that a person will lack capacity if they are unable to make a decision for themselves because of mental incapacity. Someone lacks the capacity to make decisions under the MCA 2005 Act if they are unable to:

- understand the information relevant to the decision;
- retain that information;
- use or weigh that information as part of the process of making the decision; or
- communicate their decision (whether by talking, using sign language or any other means).

If a Costs Lawyer believes their client lacks capacity under the MCA 2005 they may want to get an expert opinion.

### **What is a vulnerable consumer?**

A vulnerable consumer extends beyond that of a person with a disability. Consumers of legal services are often dealing with life-changing events and will feel vulnerable as a result. Some, such as litigants in person, will have limited knowledge of the legal situation they find themselves in. It is possible, and important, for a Costs Lawyer to consider and to reduce client vulnerability.

### **Categories of vulnerability**

Permanent vulnerability e.g. persons with learning difficulties.

Fluctuating vulnerability e.g. persons with mental health issues.

Short term vulnerability e.g. persons going through a bereavement.

### **Identifying a vulnerable consumer**

Circumstances in which a consumer might be vulnerable are listed below. It may not be immediately obvious and there is an onus on the Costs Lawyer to give their client adequate time to identify potential vulnerabilities and to consider how to overcome barriers to accessing advice.

- Age
- Low income
- Inexperience
- Low literacy
- Learning disabilities
- Cultural barriers
- Physical disabilities
- Mental health issues
- English as a second language
- Health problems
- Location

- Being a carer
- Lack of internet access
- Leaving care
- Lone parent
- Bereavement
- Loss of income
- Relationship breakdown
- Living alone
- Release from prison

### **Good practice by a Costs Lawyer**

Examples of good practice include:

- Ensure easy access to buildings.
- Consider the communication needs of certain vulnerable consumers; such clients may need advice which is more easily understood or might need specific methods of communication.
- Be aware that a client with a learning difficulty might find everyday tasks difficult; such as filling in forms, concentrating for long periods and remembering or explaining things. In such circumstances take simple steps such as allowing extra time for meetings, finding a quiet space to meet without noise or distractions and explaining things using clear and simple language.
- Be aware that short-term characteristics causing vulnerability could be things related to sudden changes in circumstances; examples include loss of employment or income, bereavement, relationship breakdown or caring responsibilities. These situations are often strongly linked to the legal services market. It is therefore important to help consumers overcome a sense of powerlessness and enable them to access legal services with confidence.

What a Costs Lawyer should ask themselves:

- Have you been trained to recognise and respond to the needs of vulnerable consumers?
- Have you been trained to recognise and respond when carers want to deal with a problem in place of your vulnerable consumer?
- Are websites and other consumer-facing communications accessible?
- Are standard communications which are sent to vulnerable consumers appropriate?
- Does the court need to be notified of any special needs?
- Are feedback mechanisms in place to check whether the needs of vulnerable consumers are being met?
- Is there a process for assessing how effectively the needs of vulnerable consumers are addressed?