

Advising vulnerable clients

Globally, regulators are increasingly turning their attention to the protection of vulnerable customers writes Wessel Oosthuizen, Head of Financial Planning, Fiscal Private Clients.

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In South Africa, the absence of a unified regulatory framework places the responsibility firmly on the shoulders of professionals, requiring them to exercise sound judgement and demonstrate ethical leadership within the advisory sector.

Recognising vulnerable situations

Many advisors will be familiar with situations such as clients forgetting to pay their bills, a partner dominating meetings while the investor remains silent, a widow expressing a desire to cash out all her investments or a teenager inheriting a substantial sum but lacking the means to open a bank account. These are not uncommon occurrences; rather, they serve as important indicators of vulnerability.

Yet advisors often lack a framework to recognise and respond appropriately. This article, the first in a series on advising vulnerable clients, explores what “vulnerability” really means and how it intersects with legal capacity in South African law. The series is dedicated to exploring the legal foundations, behavioural aspects and practical measures that advisors can employ to safeguard the interests of vulnerable clients while upholding their autonomy and dignity.

Sometimes the numbers make sense, but the client's behaviour does not; that is when vulnerability walks into the room.

Who is vulnerable?

Vulnerable clients come from a wide range of backgrounds and circumstances, including:

- Minors and young adults
- Elderly individuals
- Clients experiencing financial stress
- Clients with disabilities or medical conditions
- Partners in relationships where power imbalances or dependencies limit financial autonomy
- Legal subjectivity and capacity

There is an important distinction between legal subjectivity, the possession of rights, and legal capacity, the ability to exercise those rights. That is why guardians, curators and trustees act “on behalf of” vulnerable clients – because the person retains rights but cannot exercise them alone, as they have lost their legal capacity.

When discussing vulnerable clients, legal capacity is crucial. In South African law, legal capacity is a person’s ability to make decisions that have binding legal effect – to acquire rights and incur obligations through their own acts.

It is important to note that legal subjectivity is acquired at birth and lost at death. Every human being has legal subjectivity from birth, but not everyone has full capacity to act. Minors (under 18), people with mental impairment or anyone acting under coercion or undue influence may have limited or no capacity. Capacity can be temporary (after trauma or illness) or permanent.

Vulnerability

Between full legal capacity and proven incapacity lies a wide grey zone, the space where vulnerability lives.

Vulnerability is not a legal status; it is a practical condition. It arises when personal circumstances like grief, domination by a partner, low financial literacy, stress or cognitive decline impair a client’s ability to make sound, independent decisions.

The UK Financial Conduct Authority (FCA) defines a vulnerable customer as someone “especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care” (FG21/1, para 1.1). The same principle applies in South Africa, even though our legislation has yet to codify it.

Professional duty

Our professional obligation is very much codified and must be considered when advising vulnerable clients, but at the end, it is also about doing what is right. The FAIS General Code of Conduct and Treating Customers Fairly (TCF) principles impose duties that go beyond the law:

- **Section 2 of the Code** – advisors must act with “due skill, care and diligence”.
- **Section 8(1) of the Code deals with suitability** – advice must be appropriate to the client’s circumstances and understanding.
- **TCF Outcome 3** – clients are provided with clear information and kept appropriately informed.

Conclusion

Legal capacity is a binary concept: a person either has it or does not. Vulnerability, on the other hand, exists along a spectrum and requires professional judgement, empathy and adaptable communication. Recognising vulnerability early when decisions are legally valid but ethically sensitive distinguishes mere compliance from true professionalism.

Ultimately, advising vulnerable clients means recognising signs of vulnerability before legal intervention becomes necessary and responding appropriately. While advisors often focus on whether a client “has legal capacity”, their true responsibility begins where capacity ends and competence is in question. It is both an ethical and fiduciary duty to adjust advice as needed.