Planning for clients with diminishing financial capacity

This article continues the series on advising vulnerable clients, focusing on how financial planners can support older clients experiencing cognitive decline, increasing dependence and heightened exposure to economic abuse.

Financial capacity often declines before legal incapacity is established. The early signs may be missed payments, repeated questions, confusion about familiar investments, unusual withdrawals or a new person taking over the conversation. None proves incapacity or abuse. Together, however, they may show that the client's circumstances have changed and that the advice process must change with them.

The legal context: protection without unnecessary displacement

The Older Persons Act 13 of 2006 provides the current statutory framework. It defines an "older person" as a man aged 65 or older or a woman aged 60 or older and recognises economic abuse involving financial resources and property, including land and inheritance. The Older Persons Amendment Act 1 of 2025 has been enacted but has not yet commenced. Once brought into operation, it will introduce a uniform age threshold of 60 years.

Section 30 recognises economic abuse, including depriving an older person of economic or financial resources to which the person is entitled by law or requires out of necessity, disposing of household effects or other property belonging to the older person without consent and misusing the older person's property, including land and inheritance. Advisors may observe a child "helping" with online banking, a caregiver requesting withdrawals or a family member pressing for a beneficiary change.

Section 26 currently requires a person who suspects that an older person has been abused or suffers from an abuse-related injury to notify the director-general or a police official. The Older Persons Amendment Act 1 of 2025 expands the listed recipients to include a social worker and, where applicable, the manager of the facility, but that amendment will apply only once it is brought into operation. Credible concerns should not remain merely as internal file notes: escalation must support assessment and, where the statutory threshold is met, external reporting.

Capacity is not the whole question

Curatorship or the appointment of an administrator under Chapter VIII of the Mental Health Care Act 17 of 2002 may become relevant when a person can no longer manage their affairs. The statutory administrator route is confined to the property of a mentally ill person or a person with severe or profound intellectual disability; curatorship remains a distinct High Court process. Advisors often encounter vulnerability long before either route is appropriate. Capacity is decision-specific: managing a debit order differs from making a large donation, surrendering an investment, changing an inheritance or entering a speculative product.

Article 12 of the United Nations Convention on the Rights of Persons with Disabilities provides a useful principle: persons with disabilities enjoy legal capacity equally and should receive support to exercise it. Safeguards must respect their rights, will and preferences, remain proportionate and guard against undue influence. Support the person; do not unnecessarily replace them.

This pre-incapacity space is difficult. Under South African law, a conventional power of attorney generally ceases to operate when the principal loses the capacity to perform the act concerned; curatorship or administration may be slow, costly and substitutive; and a trust may shift ownership and control away from the client. Ask not, "Who can decide instead?" but, as the client's advisor, "What support would enable the client to decide?" Plain language, shorter meetings, written summaries and time for reflection can preserve the client's voice.

The Law Society of England and Wales also advises against treating vulnerability as a label based on age, disability or diagnosis. Ask what will help the client understand advice, express wishes and give valid instructions. Family may assist but cannot replace the client's voice without authority. Where another person answers for the client or may benefit, confirm instructions privately, explain the consequences, check for voluntariness and keep a careful note.

> Good advice is not merely about a signed form or technical capacity.

What should advisors look for?

Watch for departures from the client's baseline: repeated questions, forgotten advice, inconsistent instructions, unusual withdrawals, missed payments, unopened correspondence, confusion about finances and sudden interest in risky investments or gifts inconsistent with past behaviour.

Relational signs may be more revealing: a new person answers for the client, resists private discussion, brings a prepared instruction or is repeatedly consulted before the client answers. These signs do not prove abuse, but they require the advisor to test understanding, consequences, voluntariness and consistency with the client's objectives and values.

If uncertainty remains despite clearer explanations, more time and another meeting, seek specialist input on the specific decision.

Address consent, confidentiality and how the outcome will be used.

Guidance from the South African and UK regulators

The Financial Sector Conduct Authority's statement on consumer vulnerability, published in March 2024, recognises that vulnerability may arise from personal circumstances, behavioural biases or market conditions and may be temporary, changing or enduring. Vulnerable clients face greater exposure to unsuitable products, misleading practices and barriers to financial services. Addressing this supports financial inclusion and Treating Customers Fairly outcomes.

The United Kingdom's Financial Conduct Authority (FCA), in FG21/1 guidance for firms on the fair treatment of vulnerable customers, adds operational detail that may be helpful. It covers understanding vulnerability in the client base, equipping staff, adapting services and communications, and monitoring outcomes. A crucial point is that conversation quality matters. Replace "Do you understand?" with teach-back: ask the client to explain the choice, its consequences and why it fits their objectives. What we can do. Record and revisit communication preferences, agreed adjustments, authorised contacts and escalation triggers. Keep notes factual and proportionate. Practices should test whether vulnerable clients can access and understand advice, use the recommended product and obtain help. A standard process is not necessarily fair; fair treatment may require a different approach.

A six-step response

Use a clear six-step response: notice, pause, support, verify, document and escalate. **Notice** and record observable facts rather than diagnoses. "The client asked the same question five times and did not recall last week's discussion" is more useful than, "The client has dementia".

Pause unusual, urgent or irreversible instructions. **Support** the client by slowing the meeting, using plain language, addressing one issue at a time, providing a written summary and allowing reflection. **Verify** wishes privately where another person may benefit. **Document** the concern, questions asked, explanations given, attendees, the client's response and the reasons for proceeding, waiting or declining. **Escalate** serious concerns through another meeting, senior review, legal advice, an authorised trusted contact, referral to a social worker or, where required, reporting suspected abuse under the Older Persons Act.

Every practice needs a short protocol covering warning signs, private verification, objective notes, senior review of high-risk transactions, an escalation contact, referrals and statutory reporting. Training and file reviews ensure that fair treatment does not depend on one advisor's instinct.

Build a plan for declining financial capacity

Make vulnerability planning part of retirement planning. Keep the plan simple to administer, resilient to care costs and clear enough for a trusted support person or successor advisor to follow.

Plan for three stages. Cover independence, supported decision-making and care-intensive administration. Agree triggers for more support, including missed payments, repeated confusion, unusual withdrawals or difficulty managing correspondence.

Simplify early. Consolidate unnecessary accounts, automate essentials, keep care liquidity accessible, record trusted contacts and communication authority and capture the client's values, living arrangements and care priorities.

Strengthen high-risk decisions. For large withdrawals, beneficiary changes, family loans, gifts, unfamiliar products or third-party instructions use the above six-step response, meet privately, use teach-back, check voluntariness and obtain senior review.

Plan for continuity. Introduce a successor advisor and maintain file notes and referral relationships that another professional can follow.

Keep the response proportionate. The aim is not to take over, but to preserve autonomy while testing genuine risk. A sound plan protects the client without displacing their voice too soon.

Good advice is not merely about a signed form or technical capacity. It asks whether the client understood, acted voluntarily, expressed their own will and preferences and remains protected from foreseeable harm as ageing and dependence change daily life.

The final stress test is simple: will the plan continue to protect and serve the client when they can no longer manage it as confidently as they do today? If not, it is not yet complete. ■



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