

## **Guidance**

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#### **Accepting instructions from vulnerable clients or third parties acting on their behalf**

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### **Status**

This guidance is to help you understand your obligations and how to comply with them. We will have regard to it when exercising our regulatory functions.

### **Who is this guidance for?**

All solicitors, registered European lawyers (RELs) or registered foreign lawyers (RFLs). All SRA regulated firms, their managers, compliance officers and employees.

### **Purpose of this guidance**

To highlight issues to consider before receiving and accepting instructions from vulnerable clients or third parties acting on their behalf.

### **Determining your client's capacity**

An apparent deterioration in your client's capacity does not automatically mean they no longer have capacity to instruct you. The client might still have capacity to provide you with their instructions, but might require additional or different support to do so. However, if you have any reasonable doubt, you should take steps to determine whether your client has the capacity to give instructions and keep a record of those steps.

### **When your client still has capacity**



If you are satisfied that your client still has capacity to instruct you - potentially by your firm making reasonable adjustments to support them - you may continue to take instructions directly from your client. The Law Society's guidance, [Meeting the needs of vulnerable clients](https://www.lawsociety.org.uk/topics/client-care/meeting-the-needs-of-vulnerable-clients) [https://www.lawsociety.org.uk/topics/client-care/meeting-the-needs-of-vulnerable-clients] outlines practical support that you can provide.

In some cases, your client might decide that they would like a third party to support them, and/or prefer that you engage directly with a third party acting on their behalf. In such cases you should always obtain signed authority from your client which authorises you to share information and take instructions from a third party. It is still also advisable to verify any instructions you receive from a third party directly with your client.

## **When your client no longer has capacity**

In these circumstances - you may accept instructions that are provided by a third party acting on behalf of a client - if the individual providing those instructions has the legal authority to do so.

The nature of the legal authority required might vary. Examples can include third parties who are:

- a court-appointed litigation friend, for civil litigation work
- a representative appointed by a tribunal, for example in mental health tribunal appeals
- a court-appointed accredited legal representative in Court of Protection health and welfare cases.

In some cases, you might also receive instructions on behalf of your client from an attorney or a deputy authorised by the Court of Protection. This does not automatically mean that they have the legal authority to instruct you for the particular matter that you are representing your client on. For example - a Property and Affairs Deputy may not have the legal authority to give you instructions on a family law matter.

You should always therefore take steps to satisfy yourself that the attorney or deputy has the necessary authority to instruct you on the matter in question. The Government's [guidance for deputies](https://www.gov.uk/government/publications/new-guidance-for-deputies-in-response-to-acc-judgement) [https://www.gov.uk/government/publications/new-guidance-for-deputies-in-response-to-acc-judgement] includes information that might help you.

## **Your regulatory obligations**

The SRA Principles require you to act in the best interests of your client. You should always assure yourself that the correct legal authority is in place before you agree to accept instructions from a third party acting on your client's behalf.



Example: Where a client has made a lasting power of attorney (LPA), the LPA will identify your client as the donor who will have appointed an attorney(s). If the matter you are being asked to represent the client on is within the scope of the power granted by the LPA, you could continue to represent your client by acting through the attorney(s) and receiving instructions provided to you on the client's behalf. In such a case, you should ask to see the LPA and then consider any restrictions or conditions it contains that might be relevant considerations for your continued representation of the client.

In such situations, an attorney(s) might request confidential information about your client and you should understand why that information is needed. Attorneys are required by the Mental Capacity Act 2005 to make decisions in the best interests of the donor, and there could be many reasons why confidential information is required to make those decisions.

For example - the scope of information that a financial attorney is allowed to manage and may request, is wide ranging and can extend to legal documents or legal advice that was provided in relation to those documents. A common request is to see a client's will, and our guidance, [Access to and disclosure of an incapacitated person's will](https://referral.sra.org.uk/solicitors/guidance/incapacitated-persons/1) [<https://referral.sra.org.uk/solicitors/guidance/incapacitated-persons/1>] includes information that will help you when you have to deal with such requests.

## **Clients who lack or lose capacity without a third party with legal authority to instruct on their behalf**

Your approach here may depend on the nature of the matter you are being instructed on.

One example is if your client is a party - but lacks capacity - to conduct proceedings in the county court, High Court, family court or Court of Protection. In these situations, a litigation friend must be appointed to give instructions and to conduct the proceedings on their behalf- the one exception to this being where the Court of Protection appoints an accredited legal representative during a welfare case instead of a litigation friend.

Different processes exist for different tribunals. The Mental Health and Mental Health Review Tribunals can appoint representatives to act directly. However in other tribunals, such as the Employment Tribunal, a litigation friend will be required.

There may be some cases where you are asked to advise, or undertake pre-action work, on a matter that is not yet before a court – such as a community care or a housing matter. In such cases it will not yet be possible to apply for the appointment of a litigation friend, but you may still need to take steps to meet the requirements of the SRA Principles to act in the client's best interests. It is important to note that these



requirements are distinct from the Mental Capacity Act 2005's definition of 'best interests'.

In a situation where a legal authority is not currently in place to otherwise allow you to accept instructions on a client's behalf from a third party, you might instead take instructions from a proposed litigation friend pending their appointment by the court. In other situations the Government's guidance on appointing the official solicitor in [welfare proceedings](https://www.gov.uk/government/publications/appointment-of-the-official-solicitor-in-welfare-proceedings-practice-note) [https://www.gov.uk/government/publications/appointment-of-the-official-solicitor-in-welfare-proceedings-practice-note] and in [property and affairs proceedings](https://www.gov.uk/government/publications/appointment-of-the-official-solicitor-in-property-and-affairs-proceedings-practice-note) [https://www.gov.uk/government/publications/appointment-of-the-official-solicitor-in-property-and-affairs-proceedings-practice-note] may provide helpful information.

Steps might include:

- satisfying yourself that any person identified to instruct you on the client's behalf will be doing so in the client's best interests, and on the basis that they are a suitable potential litigation friend who should in due course receive the required legal authority in the event that proceedings are ultimately issued
- understanding how you will be paid and assuring yourself that the correct legal authority is in place if it is proposed to use the client's own funds, or that the proposed litigation friend has authority to sign Legal Aid agreements on behalf of the client.

## Further help

Our guidance - [Access to and disclosure of an incapacitated person's will](https://referral.sra.org.uk/solicitors/guidance/incapacitated-persons/) [https://referral.sra.org.uk/solicitors/guidance/incapacitated-persons/]

The Law Society's guidance - [Working with clients who may lack mental capacity](https://www.lawsociety.org.uk/en/topics/client-care/working-with-clients-who-may-lack-mental-capacity) [https://www.lawsociety.org.uk/en/topics/client-care/working-with-clients-who-may-lack-mental-capacity]

If you require further assistance, please contact the [Ethics Guidance Helpline](https://www.sra.org.uk/contactus) [https://www.sra.org.uk/contactus].