

# IPA Vulnerable IP Policy

July 2020

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## Introduction

1. All IPA members<sup>1</sup> have the right to be treated with respect and dignity while undertaking their duties. While licensed Insolvency Practitioners (IPs) have regulatory obligations as officers of the court, they may, like everyone in the population, become vulnerable at some point in their careers, and that vulnerability may impact their role and statutory duties. The IPA, as a Recognised Professional Body (RPB), Anti-Money Laundering Public Body Supervisor, and a member services organisation, wishes to support its members and licensed IP population through any personal difficulties, helping them navigate through challenges that may arise, so that their work and cases are conducted properly, and so that they can continue to meet their statutory obligations.
2. This policy sets out the IPA's approach to vulnerability and mental health as it relates to its regulatory obligations, it informs members about the support they may receive and sets out processes they should follow, and the IPA will follow, if IPA members find themselves in difficulty.
3. Mental health problems can affect IPs in many different ways and we wish to help and direct members with mental health problems to appropriate sources of advice and assistance. The IPA is concerned with the financial and emotional wellbeing of its members and aims to improve awareness of these issues amongst its staff by introducing procedures that facilitate managing their effects. The IPA is equally aware that IPs are custodians of many individuals' financial affairs, some of whom might also be vulnerable, and this policy seeks to ensure their security when IPs find themselves in difficulty.
4. The IPA policy for IPs who find themselves vulnerable or who have mental health issues, has two strands derived from the IPA's role both as an RPB and as a membership body.
  - (a) The first strand focuses on definitions and the IPA's role in protecting the public interest and identifies circumstances where:

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<sup>1</sup> throughout this document "members" includes all IPA members, IPA Licensed Insolvency Practitioners and IPA students.

- i. the conduct of an IP and their ability to maintain professional standards is compromised by their personal vulnerability. This strand considers practical ways to ensure the work on the IP's cases is maintained; or
- ii. the IP is subject to a disciplinary enquiry/other process and states that he/she is or may be compromised in how they respond to the process due to their vulnerability.

(b) The second strand relates to the support of its members in terms of identifying IPs at risk from vulnerability and providing support to them.

## PART ONE

### Defining vulnerability

5. A common misconception is that vulnerability is only associated with the frailties that can occur with advanced age.

**Using the FCA definition of a vulnerable consumer as a basis, the IPA defines a vulnerable person as ‘... someone who, due to their personal circumstances, is especially susceptible to detriment’. That detriment may be short or long term.**

6. Vulnerability can:
  - be physical or mental;
  - include a short-lived, longer term or permanent condition;
  - cover an emotional or financial shock (for example, bereavement or a drop/loss of income); and
  - include more than one element (be multi-layered) and can fluctuate over time.
7. The definition suggests vulnerability can affect anyone involved in an insolvency procedure including the professionals. Either as external events happening to them or because of stress arising within the work itself, for example having to conduct litigation.
8. The definition is subjective in that similar sets of circumstances can affect individuals in different ways so that there are no simple tests that can be applied in assessing whether someone is vulnerable or not.
9. **The IPA is not qualified to medically determine vulnerability nor will its Committees or Secretariat act as medical professionals when dealing with members. However, an awareness of some of the indicators that may cause someone to be regarded as vulnerable has been propagated amongst members to help understanding of the issues and factors relating to vulnerability. Staff have, however, understand the contents of this policy and their responsibilities in responding to IPs who are suffering from vulnerabilities. IPA members can be assured that any approach to the IPA about vulnerability issues will be treated confidentially and with sensitivity.**
10. In addition, the IPA has appointed a Vulnerability Point of Contact. The person undertaking this role will have been given some specialist training in vulnerability and mental health awareness, and will have a deep knowledge of the processes to address

vulnerability. If any member wishes to raise any issue of vulnerability, but does not wish to approach their usual contact in the secretariat, then they may contact Alan Limb, on [Alanl@ipa.uk.com](mailto:Alanl@ipa.uk.com).

## Identification of vulnerability

11. Many organisations (including the FCA and Citizens Advice) suggest vulnerability is identified by understanding risk factors.
12. Some of the risk indicators are easier to identify than others, for example, someone with an obvious physical/sensory disability. Other risk factors might be hidden and can only be identified following more in-depth personal interaction.
13. It is important that members feel confident about being able to discuss health and vulnerability issues openly and effectively and can talk to the IPA if they are worried about their health and how it is impacting upon their role or business. We suggest any member who considers that one or more of the risk factors applies to them speaks to an Inspector or a Regulation Officer about their concerns. All discussions will be kept confidential, and any initial disclosure (unless there is an identifiable and notifiable detrimental impact on case work) will not affect an IP's standing or risk profile for monitoring purposes. If for any reason, a member does not want to approach their usual contact, then they might approach the Vulnerability Point of Contact, Inspector Alan Limb ([alanl@ipa.uk.com](mailto:alanl@ipa.uk.com)).
14. We recognise that vulnerability may be deeply personal and that an IP may not wish to raise the issues or have them more widely known. Accordingly, any such information that may be needed for our records will only be noted with the member's written consent and the record will be securely maintained by the IPA separately from other membership or regulatory details and will not be disclosed to IPA committees.

## Vulnerable members and support

15. When you have been identified as a potentially vulnerable member or IP or you have requested to be such, we can adjust the way the IPA interacts with you to remove or reduce any disadvantage that you might be facing because of your disability, health problem or mental health issue.
16. Adjustments that might be requested, include for example, but are not limited to:
  - allowing more time when making an application to us or responding to our enquiries (we will tell you if we cannot extend a time limit set by law);
  - offering an alternative if you are unable to use the IPA online applications;

- using a preferred means of communication such as by email or telephone;
- allowing you to have someone with you during an interview or firm visit; and/or
- agreeing a single person to manage your communication with us if several departments are involved.

17. In most cases it will be quite straightforward to make such arrangements. In some cases, however we will need to find out a bit more about your circumstances before we can make appropriate arrangements. We will consider each instance on an individual basis, taking into account the particular circumstances.
18. Where you have made a request for reasonable adjustments, the IPA will consider:
- how practical it is to make the adjustment;
  - the resources involved in making the adjustment requested; and
  - whether the request would affect our responsibilities towards other people.
19. We will not be able to agree an adjustment that fundamentally changes our responsibilities or powers as a regulator. For example, if there is an immediate risk to a member of the public, we are unlikely to be able to delay an urgent investigation into allegations made about an IP, but we can make arrangements to help you through the process.

## Vulnerable members and their work

20. In certain circumstances vulnerability may affect a member's ability to work in a professional capacity or otherwise limit the fulfilment of their duties. In such circumstances the IPA would wish to assist by facilitating support such as the involvement of an alternate IP, the appointment of joint officeholders, or the temporary transfer of all or part of a case portfolio. Any measures adopted will be carried out after a careful risk assessment.
21. In such circumstances the disclosure of acts or omissions would not automatically be regarded as a disclosure under the general duty to report potential misconduct under paragraph 4 of SIP 1.

## PART 2

### Vulnerable Members and the Disciplinary Process

22. Applying the vulnerable person policy to the disciplinary process is a complex area, it is difficult to provide a simple checklist of procedures to follow to address the issues raised. We hope that the factors outlined in this document will assist members with identifying circumstances where consideration of vulnerability may become an important factor in dealing with a disciplinary or regulatory.
23. The key practice for a member to adopt is to document the reasons for their decisions in conducting the insolvency matter and explain the factors they have taken into account in relation to their health or other issues.

## Applicability

24. Part 2 guidance applies where it appears that a member:

- a. during the course of an investigation into any complaint, or after a case has been referred to the Regulation & Conduct Committee (R&CC) or the Disciplinary and Appeals Committee (DAC)<sup>2</sup>, or any time before or during a hearing before a Disciplinary Tribunal (DT), may be too ill to participate in the disciplinary process;
- b. at any time before or during consideration of a licence application by the R&CC, may be too ill to participate in the proceedings; or
- c. after a case has been referred to, or any time before or during a hearing before, the Appeal Panel (AP), may be too ill to participate in the appeal process but does not wish to withdraw their appeal.

25. In the event that a hearing before the R&CC, DT or AP is adjourned, then upon the application of the IPA or upon its own motion the relevant Committee may consider determining any of the matters set out below;

## Vulnerability on health grounds

26. Where it is asserted by or on behalf of a member that they are too ill to participate in a disciplinary process or proceedings, the member shall, on the request of the relevant Committee, Tribunal or Panel or the Head of Operations, submit within fourteen days (or other suitable and previously agreed timeframe):

- a. medical evidence to support the assertion, including a prognosis and indication as to when, if at all, the member would be well enough to participate in the process or proceedings;
- b. if they have been or are a principal of a firm, details of any arrangements the member has made for the continuity of their practice during the period of their ill health; and

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<sup>2</sup> When a matter is referred to the DAC either a DT or an AP to consider it will be drawn from the DAC members depending on whether the matter is a Formal Complaint or an Appeal against a decision of either the R&CC or a DT.

- c. if the member holds an Insolvency Licence from the IPA, medical evidence addressing the extent to which the member's asserted ill health impacts upon their fitness to carry out the activities authorised by their Licence and the member's ability to conduct their practice with reasonable care and skill.

## Examination of the member

27. If at any time it appears to the IPA that the circumstances set out under the heading 'Applicability' may have arisen, the IPA may:
- a. require the member to be examined by a doctor or other medical professional of the IPA's choice; and/or
  - b. require the member to sign a form of consent, granting the doctor or other medical professional of the IPA's choice, access to the member's clinical records for the purpose of the examination and report.
28. The IPA shall disclose to the member any written opinion or information received by it pursuant to its invitation and shall give the member a reasonable opportunity to respond.
29. Any failure on the part of the member to co-operate with the process set out above shall be taken into account in the assessment of that person's ill health, and in assessing the weight to be given to the evidence filed on the member's behalf.

## Reasonable Adjustments to the disciplinary process

30. When we have identified a potentially vulnerable member or IP, or at their request, we can adjust the way the disciplinary process operates in order to avoid any unfair prejudice. Reasonable adjustments, may be for example, but are not limited to:
- (a) Additional time can be allowed for responses to our enquiries
  - (b) A preferred means of communication can be used
  - (c) The matter can be considered by a sub-committee of the R&CC to minimise exposure
  - (d) Reports and other documents can be anonymised before being considered by committees

31. Please contact the IPA secretariat or Vulnerability Point of Contact to discuss reasonable adjustments. Not all adjustments may be possible, but the IPA undertakes to consider all reasonable requests.

## Closing Comments

32. This policy highlights just some of the many ways vulnerability can present itself. It is a complex and wide-ranging topic. Comments are invited from members to help the IPA develop its approach to vulnerability.
33. IPs and their firms are also encouraged to develop a vulnerability policy dealing with the approach to recognising and responding to vulnerabilities in the individuals with whom they deal be they people in debt or creditors, employers or their employees, directors or staff, and addressing handling vulnerabilities manifesting in themselves or their staff, including business continuity considerations.
34. Understanding vulnerability is a developing area within regulation and we will be revisiting and updating our policy as we learn from experience.

Last revised 15 July 2020