



Clients experiencing ‘sudden wealth’ – a guide for professional advisers

Foreword by Keith Richards, Chair of The Financial Vulnerability Taskforce

The content for this guide has been written by subject matter experts and members of the Taskforce steering group on a *pro bono* basis to help support fellow professionals.

The Financial Vulnerability Task Force (FVT) was established to promote greater understanding, encourage appropriate behaviours, and establish good practice in respect of consumer vulnerability and the vulnerable circumstances in life we all face, even when it includes positive situations such as sudden wealth.

It's often overlooked that suddenly receiving a windfall can create huge challenges for people, particularly where they are already vulnerable or not used to dealing with large amounts of money.

In line with the FCA's expectations of dealing with vulnerable circumstances and consumer duty, we have published two free to download guides on how to navigate the pitfalls of sudden wealth as part of a 'good practice' programme of professional sharing. The guides will help advisers to recognise and consider how 'sudden wealth' can place their clients in vulnerable circumstances and provide guidance on how to flex the advice process in these increasingly common, yet potentially vulnerable, set of circumstances.

To complement the adviser guide, the FVT has also launched a consumer facing guide for professional advisers to give to their clients or add to their website, as an aid to helping consumers understand some of the difficulties they might face. This equally positions the value of professional regulated advice as a safe pair of hands.

What is 'sudden wealth?'

Whilst this is one of those terms that can be immediately understood, it can include a wide range of situations, including receiving the £1m jackpot prize on NS&I Premium Bonds, winning a lottery jackpot, a significant online gambling pay-out, a large, unexpected inheritance, the sale proceeds from a business sale or perhaps a large compensation payment for medical negligence or personal injury.

However, this guide focuses on the needs of clients who suddenly and unexpectedly receive a large financial windfall from a payment received other than from a business sale or a compensation payment that is much larger than they are used to dealing with. The subjects of medical negligence, personal injury and business succession planning will be dealt with in other specialist guides.

The key characteristics are:

1. A person has received a significant amount of money.
2. It was unexpected - it is 'out of the blue'
3. The person is not used to dealing with large amounts of wealth
4. It occurs suddenly.

What has 'sudden wealth' got to do with vulnerability?

The best way of answering that question is to put yourself in the shoes of a client, who lives a modest lifestyle, has a job, a house with a mortgage, a family, a car on HP, with a small but growing pension pot and a few thousand pounds in savings. He or she is happy with their life.

Then one day, completely out of the blue, they receive a knock on the door from NS&I telling them that their Premium Bonds have just paid out the £1m jackpot or they've just checked their lottery numbers and it's dawned on them that their numbers have hit the jackpot.

They are immediately thrust into circumstances that create vulnerability.

Whilst it is accepted that some people remain calm, considered, and resourceful, they are in the minority. Most people immediately say and do things that either potentially place them in a detrimental position or exacerbate an already vulnerable set of circumstances.

Dr Stephen Goldbart¹, a leading light on the psychological challenges associated with wealth, first identified the 'sudden wealth syndrome,' which can also be referred to as 'identity crisis'² stating that, *"...recognisable signs of developing or having developed Sudden Wealth Syndrome, include emotional afflictions such as isolation from former relationships, the paranoia of losing one's affluence, guilt, and the uncertainty or shock due to the unexpected nature of their fortune. These often develop from situations, such as winning the lottery or other gambling activities, unprepared inheritance, cryptocurrencies, and investing in businesses."*

¹ <https://www.psychologytoday.com/us/contributors/stephen-goldbart-phd>

² The term was coined by German psychologist Erik Erikson.

What does the FCA say about vulnerability?

You will be aware of the FCA's guidance for firms on the fair treatment of vulnerable customers (FG21/1) <https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf>, which sets out four key drivers of vulnerability, which are:

1. Health
2. Life events
3. Resilience
4. Capability

We would also suggest that 'abuse,' which is defined in law³, maybe a 5th driver.

People experiencing 'sudden wealth' will certainly have had a 'life event' that may cause vulnerability. Also, depending upon the person's overall circumstances, they may be suffering from poor health, lack capability and have poor resilience. They may also be victims of abuse.

The purpose of the FCA's guidance is to help regulated advisers dealing with clients who are in vulnerable circumstances, to achieve the same quality of outcome that they would have achieved had they not been in vulnerable circumstances.

So, for regulated advisers (such as financial planners, financial advisers, and investment advisers) particular care is needed in following the FCA's guidance to ensure compliance with the requirement to Treat Customers Fairly.

Remember that vulnerability is not synonymous with poverty!

Who should read this guide?

This guide is aimed at professional advisers who want to deepen their understanding of the specific challenges faced by clients who experience sudden wealth.

These typically include financial planners, financial advisers, investment advisers, wealth managers, lawyers, accountants, and tax advisers. However, this is not an exhaustive list and there will be other professionals encountering clients who are in vulnerable circumstances as a result of experiencing sudden wealth or their existing vulnerabilities are exacerbated by their sudden and dramatic change of circumstances.

A bit about the author of this guide

Robin Melley, one of the members of our steering group has been the lead in developing the content for this guide and we would like to extend our gratitude for him sharing his knowledge and experience on a *pro bono* basis to help support fellow professionals.

Robin is, first and foremost, a chartered financial planner and a fellow of the Personal Finance Society, having joined the profession in 1991. However, he is also a registered trust and estate planning practitioner and a full member of the Society of Trust and Estate Practitioners (STEP) an

³ Care Act 2014

accredited later life adviser and a full member of the Society of Later Life Advisers (SOLLA) and a member of the Expert Witness Institute (EWI).

He has many years of valuable experience of dealing with clients who find themselves in vulnerable circumstances and is one of a very small handful of professional advisers who hold the STEP Diploma in Advising Vulnerable Clients, which is recognised as the 'go to' professional qualification in the field of advising clients in vulnerable circumstances.

Robin's firm, Matrix Capital, were exclusively appointed by National Savings and Investments (NS&I) in 2014 and over the last 8 years, have had the enviable task of providing financial guidance and advice to the lucky people who have won the £1m jackpot prize on their Premium Bonds. So, he has plenty of experience in helping people in this situation.

How do people, experiencing 'sudden wealth,' feel?

There is a whole range of emotional responses.

It's a shock when the news is initially received. Some people almost faint, some people are convinced it's a scam and become angry and defensive, some people are overjoyed and blurt the news out to whoever they happen to be with at the time, causing problems for themselves later.

Once the initial shock has passed, other feelings and negative emotions can emerge, such as fear, anxiety, sadness, and guilt. You might think that this is a strange set of emotions to associate with receiving a life-changing amount of money. However, it needs to be borne in mind that professional advisers are used to dealing with large sums of money, but many people aren't. It is, therefore, important to have empathy and put yourself into the shoes of the people experiencing sudden wealth.

Some of the negative feelings are sometimes made far worse because of unwise actions taken by the person, or their family members, as the result of a kneejerk reaction to their sudden change of circumstances. Although we address common mistakes that people sometimes make later in the guide. A common pitfall is that the person immediately makes promises to family members and friends that they will receive a large gift but then later regret making such a promise. This often occurs when they start to understand the overall impact of their promises, they then start to feel conflicted, which in turn creates emotional turmoil that can sometimes lead to anxiety, loss of sleep and a breakdown in relationships.

That might seem a very bleak outlook, but it does happen and, as professional advisers, we should be alert to any potential negative emotions and use our skills and knowledge to safely guide clients through the potential emotional challenges they may face, particularly in the early stages.

What are the common mistakes made?

Here are some of the more common pitfalls that sudden wealth clients have encountered:

1. Telling people and jeopardising their anonymity:

Many people receiving sudden wealth, feel compelled to share the news with family members, friends, and colleagues. Sometimes, they do it immediately, because they happen to be with other people when they first hear the news.

This can lead to several difficulties and there are many examples where people have ended up either creating circumstances where they become vulnerable, or they have made an already difficult set of circumstances into an even more challenging situation than it was before they received the news. It can also lead to the person becoming a victim of fraud, scams, and financial abuse.

2. Not putting the cash in a safe place:

High Street banks and building society deposits are only protected up to the first £85,000 per account holder under the Financial Services Compensation Scheme (FSCS). Also, when they opened their current account, they may have agreed to marketing preferences that allow the bank or building society to approach them with other products and services, resulting in possible unwanted approaches from other companies within the banking group with their own sales targets to meet.

There have been instances, particularly in small towns and villages, where the bank staff know the customer or are related to them; and the person may not have wanted them to know of their good fortune.

3. Promising or making gifts without understanding the ramifications:

As mentioned above, this can lead to several difficulties with their emotional state and their relationships with other people. Promising to make gifts and then being conflicted once they learn of the overall impact can leave them in an awful situation. They must then decide between not fulfilling the promise they now regret or following through on the promise despite now realising that, in doing so, they have created a detrimental situation that they now must endure.

There are also financial problems sometimes created, particularly when someone wishes to make a gift to a discretionary trust where, in hindsight, had they known, they would have delayed making gifts until after they had settled a trust, for example.

4. They don't know what they don't know:

Many winners, particularly where they have not been used to dealing with investments and having a relationship with a financial planner or adviser, display little understanding of the issues and opportunities that suddenly acquiring a large amount of capital presents.

There can also be a higher degree of ignorance and cynicism about taking professional advice. There can be a tendency to lack understanding of the value of advice and what a reasonable fee would be. Also, there can be a lack of understanding of which type of professional advice they need – is it financial planning, financial advice, investment advice, legal advice, tax advice they need? They often do not know where to start and how they join it all up!

5. Hasty decisions and irrational behaviour:

Buying expensive homes and cars without considering the ongoing costs of ownership, is one such example of this type of behaviour.

A £2m home will cost a lot more to run than a £250,000 semi-detached home. An Aston Martin costs more to insure and maintain than a Skoda. The mistake may then be compounded by the person using the remaining capital to fund the newly acquired assets, instead of perhaps investing the remaining capital to generate the income necessary to meet the ongoing running costs. Consequently, they can eventually extinguish their capital, leaving them having to either borrow to maintain the asset or sell it at a much-reduced price, leaving them in a detrimental position.

6. Making unwise investments without professional advice:

This is sometimes made worse by the person having given up their anonymity because they can come to the attention of unscrupulous people who seek to persuade them to invest in a business venture or an unregulated fund that ultimately fails.

Suddenly acquiring significant wealth can seem like a 'bottomless pit' of money to them and their decision-making can be skewed by the fact that they feel invincible. Decisions, at the best of times, are often based upon emotion instead of logic. However, this can be a highly charged emotional time that amplifies the emotions that drive decisions. If they subsequently reconsider these decisions and take professional advice, they can soon realise they were seriously flawed and have resulted in them being placed in a very precarious position.

7. Estate planning and wills:

A large windfall can take someone from not having an inheritance tax (IHT) liability, and never having to consider it, to suddenly having to leave their family facing a bill of several hundreds of thousands or even millions.

Many people either do not have a valid will or their will has become unsuitable given their changed circumstances.

Estate planning can be a whole new area of planning that they know little or nothing about.

What about those in highly vulnerable circumstances?

As we have pointed out in the Vulnerability Charter (<https://www.fvtaskforce.com/the-charter>) it is not people that are innately vulnerable, it is not a human condition, it relates to the circumstances and not the person, accepting of course that there are some people who you would quite rightly say are vulnerable – those who have lost mental capacity, for example.

So, it is worth reminding ourselves that every person enjoying 'sudden wealth' is immediately in vulnerable circumstances. Even if that vulnerability is short-lived, it will be safer to assume that they are in vulnerable circumstances and have an awareness of their full situation and to view all new clients through the lens of vulnerability to provide them with a safe pair of hands.

That aside, there are certain groups of people who experience sudden wealth that are, by definition, in highly vulnerable circumstances that justifies special consideration by professional advisers:

1. Minors

In most circumstances where money is being received by a child under the age of legal capacity (i.e., 18 years of age) the funds are typically held within an express trust. However, there is one exception to this, which is NS&I Premium Bonds.

Up until age 16 years, a child's Premium Bonds are held by a nominated parent (or responsible adult) which includes any prizes associated with the holdings.

Once the child reaches the age of 16 years, they take legal ownership of their Premium Bonds. Up until that age, the child is the 'beneficial' owner and the nominated parent, has 'legal' ownership. This situation places a fiduciary obligation upon the nominated parent towards the child. In other words, the relationship between parent and child takes on another additional dimension of 'trustee' and 'beneficiary.'

There have been many children over the years that have received a £1m jackpot prize from their Premium Bonds and there are several potential pitfalls that this creates.

What does 'fiduciary obligation' mean?

Very simply, the nominated parent has a duty to look after their child's money for the benefit of the child. This establishes a trustee and beneficiary relationship between the parent and child. It goes without saying that someone in a fiduciary position has a general duty to be loyal, honest, and to have integrity; and to act in good faith, be transparent and accountable. A fiduciary must not allow their personal interests to conflict with the interests of the person(s) to whom they owe a fiduciary duty.

It is very important for a person in a fiduciary position to take their duties and responsibilities seriously. They also need to understand that it is a personal duty and one which cannot normally be delegated.

The duties are set out in law⁴ (both in legislation and through common law) and there may be serious consequences if someone in a fiduciary position fails to carry out their duties.

Once a fiduciary obligation has been established, the duties apply regardless of the amounts involved. However, if your child is for example in the very fortunate position of winning a larger amount on their Premium Bonds, then you should be aware that there are several powers and duties that will need to be considered with even greater care and diligence.

A person in a fiduciary position is effectively acting as a trustee and will need to consider their powers and duties, which include the power to invest⁵. You should also be aware that the trustee has certain other obligations in relation to investments, which include considering the suitability⁶ of any investment and the requirement to take advice from a suitably qualified adviser⁷.

⁴ S.1 Trustee Act 2000

⁵ S.3 Trustee Act 2000

⁶ S.4 Trustee Act 2000

⁷ S.5 Trustee Act 2000

At some point, the trustee may wish to pay income or capital out for the benefit of the child. There are several important considerations that you should be aware of on this also that are also set out in legislation.⁸⁹

What could go wrong?

Where a trustee fails to fulfil their fiduciary duties towards a beneficiary, there is a breach of duty under the law. These may include:

- a) Failing to invest in an authorised manner
- b) Making an unauthorised or secret profit
- c) Failing to distribute the correct amounts to the correct people
- d) Making a substantial unauthorised purchase, such as buying property

Where a breach occurs, a beneficiary has the right to seek legal redress. Whilst this may seem an extreme possibility, apart from the financial implications of a trustee being sued, in these circumstances, it would be a child suing a parent. It is not difficult to imagine the negative impact that this could have on family relationships in future. Notwithstanding the rights of the child, in circumstances where the child's funds are misappropriated by the parents, the parent/guardian doing such a thing may also be committing a crime¹⁰.

So, as a professional adviser, you need to be alert to suggestions from a parent of a child receiving a £1m Jackpot prize that they are considering using the money for their own purposes (i.e., paying off the mortgage on the family home) or sharing some or all their child's money with a sibling or other family member or wanting to invest inappropriately. Hopefully, this guide will help you to make the parent (i.e., the trustee) aware of their obligations and advise them accordingly.

2. Cognitive impairment or lacking mental capacity

It is not unusual to be required to advise a client that has received sudden wealth who has either lost mental capacity or may be showing signs of cognitive impairment.

People in these circumstances should quite properly be regarded as highly vulnerable from outset, requiring special knowledge and skills to provide a safe pair of professional hands for them.

They are particularly vulnerable to scams, fraud, and financial abuse; sometimes the perpetrators are their close family members, neighbours, carers or friends. So, great care is needed in the way in which you, as a professional adviser, approaches the process of providing support and advice.

It is important to establish whether the client has a properly drafted lasting power of attorney (LPA) for finance and property or an enduring power of attorney (EPA) to establish who has the legal authority (if any) to act as an attorney on behalf of the person (the donor). There is a common misconception that a 'next of kin' can step in and act for someone else.

⁸ S.31 Trustee Act 1925

⁹ S.32 Trustee Act 1925

¹⁰ S.4 Fraud Act 2006

'Next of kin' has no legal basis in law. The only person(s) who have the legal authority to act on behalf of someone else is either an attorney appointed by power of attorney, or a deputy appointed by the Court of Protection.

Points to consider:

- a) Where the client has established either an LPA or an EPA, obtain an authorised copy and make sure you read it to understand who has been appointed as an attorney(s) and gain an understanding of any preferences and instructions issued by the donor.
- b) Be prepared to guide the attorney(s) on their obligations under the Mental Capacity Act 2005 (MCA) – particularly concerning the principles,¹¹ the need for them to always act in the donor's best interests,¹² and the restrictions that apply to making gifts on behalf of the donor¹³.
- c) If the person has mental capacity but has not established an LPA or an EPA, encourage them to do so (straightaway if there are signs of cognitive impairment) and collaborate with a suitably qualified solicitor or trust and estate practitioner, who can advise on the establishment of an LPA for finance and property.
- d) If the person lacks mental capacity and does not have an EPA or an LPA established, an application will need to be made to the Court of Protection for the appointment of a deputy; and this will need to be granted before you are formally appointed and before any advice can be given.

A holistic approach and collaboration are vital

The very nature of vulnerability demands a holistic and often a multi-disciplinary approach to achieve the best possible outcomes for clients.

As professional advisers, we are well versed in the benefits of holistic financial planning and collaborating with other professional advisers. However, where someone is in vulnerable circumstances, there is a much greater emphasis on having a holistic and collaborative approach from an early stage in the advice process.

With scale, often comes complexity. There will be financial planning issues, estate planning and wills, later life planning and LPAs, inheritance tax, capital gains tax, income tax, gifting, trusts, pensions, and investments to name a few.

Be aware of your own scope of practice and ensure that you build a team of professional advisers to provide a collective safe pair of hands for the client.

¹¹ S.1 MCA

¹² S.4 MCA

¹³ S.12 MCA

Tricky situations that may occur

Here are a few examples of dealing with sudden wealth clients:

Financial abuse:

One key advantage that a financial planner or adviser has over the other professions is the regular contact and the nature of the relationship that is developed over a lifetime with a client.

Solicitors tend to only hear from clients when they need a standalone package of advice (e.g., a divorce, a property purchase or to write a will). Accountants tend to deal with businesses and meet with them annually to prepare their accounts and submit their tax returns. However, a financial planner or adviser, providing ongoing advice and review, is having regular contact with clients and often their family members and other advisers.

So, financial planners and advisers are well-positioned to have an awareness of any financial abuse that may be occurring. We have created a very useful resource to help you have an awareness of financial abuse and to know what to do when you have suspicions of abuse. This may be found at: https://www.fvtaskforce.com/files/ugd/2c5374_ca30472920064d528e13d6c6495d739c.pdf

Attorneys behaving badly:

Professional advisers need to understand the obligations placed upon attorneys and deputies, which are set out in the Mental Capacity Act 2005 (MCA).

Most attorneys will want to ensure they comply with the MCA and always act in the best interest of the donor. However, they may need a helping hand in properly understanding their obligations and knowing how to ensure compliance with the MCA. Equally, there may be circumstances where you suspect that an attorney or a deputy is exceeding their authority under an LPA, and EPA or a deputyship order and are financially abusing the donor.

This may also create a conflict of interest for you as the professional adviser, where you are perhaps being asked by the attorney to facilitate a decision that you do not believe is in the donor's best interest.

It is vitally important that you understand the law on these matters, or you collaborate with a professional adviser that does.

There are several steps that a professional adviser can take to help safeguard a victim of financial abuse, including reporting the matter to the Office of Public Guardian (OPG) to investigate your concerns under the confidential whistleblowing procedure. In extreme circumstances, the OPG may apply to the courts, who may direct that an LPA or an EPA is revoked¹⁴ where the donor cannot revoke it themselves and where the court is satisfied that the attorney has behaved (or proposes to behave) in a way that is not in the donor's best interests.

Any conflict of interest should be identified and disclosed, avoided if possible, and handled professionally if they cannot be avoided.

¹⁴ S.22 (4)(b) – MCA 2005

Where there is the possibility that the person lacks mental capacity:

The professional adviser must establish that the client has the capacity to enter into contracts to implement any advice.

Unless you are qualified to undertake mental capacity assessments, you will need to collaborate with a healthcare or social care professional for them to undertake an assessment and confirm (or otherwise) that the client has mental capacity before proceeding.

This can be a very tricky situation to have to deal with, particularly in explaining to a client that a capacity assessment needs to be undertaken; and it is not something that can be taught in this guide. However, an approach that may be considered is to frame the need for an assessment to be undertaken in a positive way.

Instead of bluntly telling the client that a capacity assessment may be required, explain to the client that it is really important to them that whatever they decide to do cannot be challenged at a later date and to do that, we need to arrange for an assessment to be carried out that confirmed that you do have the capacity and to have a report that can be relied upon to prove that is the case should anyone seek to question what you have decided to do in the future.

How do you tell someone they do not have mental capacity and cannot proceed with a transaction?

It's never easy to deliver bad news but here are some tips from Caroline Bielanska¹⁵:

- 1) Deliver the news in person
- 2) Be honest
- 3) Be sensitive to how your opinion will make the client feel
- 4) Speak slowly and clearly
- 5) Maintain eye contact
- 6) Put the client at ease; initially make small talk
- 7) Find the client's starting point. Do they remember why they came to see you?
- 8) Do they recall seeing a doctor (if a medical assessment was needed) and do they remember why this was needed?
- 9) You may need to remind the client that they wanted to enter into a legal/financial transaction and that you and others had some doubts as to whether they understood all that was required in law to do so?
- 10) Most people need a warning that they are to hear bad news – 'I'm sorry but I don't have good news.'
- 11) Then explain it in more detail – 'it seems your memory is not good enough to be able to go ahead with this transaction at this moment in time.'

It is better to meet face-to-face and to reassure the person and explain the context. Also, avoid the word 'mental.' You can explain that the courts may be able to do this for them and couch things in positive terms. Also, make sure they are supported by a friend or family member.

¹⁵ STEP – Advanced Certificate in Advising Vulnerable Clients workbook II

In summary

We hope you will agree that, whilst on the face of it, being the recipient of sudden wealth can be an extremely positive and life-changing experience for the person themselves and their families it is fraught with danger. When you scratch beneath the surface, you begin to realise that they are potentially entering dangerous waters that may be extremely difficult for some people to navigate through.

The key, of course, is professional advice delivered by someone (or a group of professionals willing to collaborate) that is suitably qualified and experienced to be able to deal with the many varied sets of circumstances that may occur.

To provide a safe pair of hands, it is vitally important that you equip yourself with the technical knowledge (or be willing to refer clients if you haven't) to deal with these special issues, particularly where you are dealing with highly vulnerable people, such as minors, frail elderly and those lacking mental capacity. However, it is not just about technical competence, dealing effectively with sudden wealth clients who are invariably vulnerable at least to some degree, it is the intangible skills that play such a crucial role, in helping people to achieve good quality outcomes.

This guide cannot possibly cover all of the knowledge and skills to be highly effective with sudden wealth clients. Hopefully, though it has helped to put you on the right path, and we wish you well.

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