



Jersey Financial
Services Commission

Guidance notes

Provision of investment services to vulnerable persons under the Code of Practice for Investment Business

Glossary of terms

Defined terms are indicated throughout this document as follows:

Abbreviation	Full Name
IB Code	Code of Practice for Investment Business
JFSC	Jersey Financial Services Commission
FSJL	Financial Services (Jersey) Law 1998
registered person	A person who is registered by the JFSC under Article 9 of the FSJL to carry on Investment Business as defined in Article 2(2) of the FSJL
VP	Vulnerable Person
Investment Employee	Individuals captured by Article 38(1)(da)(iii) of the FSJL

1 Introduction

- 1.1 The Jersey Financial Services Commission (**JFSC**) consulted with the Investment Business sector on proposed enhancements to the Investment Business Regime during the course of 2018, and issued its feedback paper on that consultation in December 2018.
- 1.2 The majority of respondents were in favour of the enhancements to the Code of Practice for Investment Business (**IB Code**), but some did request guidance from the JFSC in order to clarify its expectations in several areas.
- 1.3 As such the JFSC is producing a number of Guidance Notes in order to outline its expectations for those areas.

2 Background

- 2.1 This guidance note is in response to a number of issues identified within the Investment Business sector relating to the treatment and level of care provided to vulnerable or potentially vulnerable persons (**VP**).
- 2.2 The guidance note aims to raise the profile of this matter with registered persons, highlight key areas of focus and provide some practical considerations to help address these concerns.
- 2.3 The JFSC has identified weaknesses in this area through its programme of on-site examinations, investor complaints, industry feedback and a number of high profile cases where VPs have been taken advantage of or not afforded the appropriate level of protection.
- 2.4 The JFSC has also identified a number of examples of good practice within the industry, which can serve as an example to other firms and improve consistency across the Investment Business sector.
- 2.5 The issue of protecting vulnerable persons has increasingly received attention across multiple jurisdictions, regulators and international organisations such as the International Organization of Securities Commissions, which has published a report focusing on senior investor vulnerability. This is particularly important with an ageing population, which has been identified as a global phenomenon with far reaching socio-economic implications for most countries; however, age is only one factor to be considered when assessing for potential vulnerability.

3 Scope

- 3.1 This guidance note provides guidance following the introduction of the IB Code in respect of vulnerability.

4 Code Requirements

- 4.1 Vulnerability is addressed under Principle 2 of the IB Code which states that - A registered person must have the highest regard for the interests of its clients. The requirements in respect of Vulnerability are set out in paragraph 2.5 of the IB Code as follows:

A registered person must identify and afford appropriate protection to a vulnerable client.

5 Guidance

This guidance note provides guidance on the following matters:

- › What is a vulnerable person?
- › What situations might increase the likelihood of an individual becoming vulnerable?
- › How can a registered person assist vulnerable persons?
- › What systems and controls should a registered person have in place to manage vulnerable persons?
- › JFSC's expectations of a registered person in relation to vulnerable persons.

6 What is a vulnerable person?

- 6.1 There is no set definition of a VP; however, in broad terms a VP can be considered as an individual whose personal circumstances or characteristics can increase their susceptibility to financial detriment, particularly where a registered person is acting without appropriate care or diligence.
- 6.2 There are a number of characteristics, and situations, which could result in someone being more vulnerable when it comes to the provision of investment services. Vulnerability can be obvious, hidden, temporary or permanent.
- 6.3 The following table provides some examples of those characteristics and situations which could result in a client's vulnerability increasing:

Examples of characteristics of potential vulnerability	
Age (Covers both the young and old)	English as a second language
Low income	Low literacy/learning difficulties
Financial desperation	Health problems
Inexperience of financial matters	Physical Disabilities
Mental Health issues	Lack of internet access/Technical knowledge
Single parent/lack of family support network	Sensory impairment

7 What situations might increase the likelihood of an individual becoming vulnerable?

- 7.1 There are a number of situations that could arise that may make an individual who would not ordinarily be deemed a VP to become vulnerable either temporarily or on a longer term basis. Whilst some of these issues may not always be known to a registered person and an Investment Employee, they should be mindful of a client's particular circumstances when providing investment business services and tailor their approach accordingly.
- 7.2 The following table provides some examples of circumstances or situations which may increase a client's vulnerability either on a temporary or extended basis:

Examples of circumstances or situations which may increase vulnerability	
Loss of income	Bereavement
Loss of employment	Victim of crime or an accident
Breakdown of relationship	Addiction/gambling habit
Social isolation	Taking certain medication
Resilience – emotional/financial shock	Non-standard requirements/limited options

8 How can a registered person assist vulnerable persons?

8.1 Ultimately, it is incumbent upon the registered person to decide how it interacts in practice with VPs; however, some examples of good practice that the JFSC has observed include the following:

Additional care

- 8.1.1 A registered person can assist vulnerable or potentially vulnerable clients in a number of ways, for example, inviting another member of their family or a trusted friend or adviser to help them consider and understand the financial advice or investment service being provided. The registered person should also consider (where appropriate client consent has been granted) sending copies of relevant documentation to the trusted individual for reference and safe-keeping. Whilst this approach is generally considered as being of benefit to the client, a degree of caution should also be applied to ensure that the trusted third party is indeed acting in the client's best interest.
- 8.1.2 A registered person should record whether they consider a client to be in need of additional assistance and why, along with any additional measures they have taken to ensure that the client has understood the investment advice or proposal or any other material matters addressed.
- 8.1.3 Where appropriate, individuals with a limited command or understanding of English should be informed that they may wish to use a representative or interpreter at relevant discussions, who has a full command of English (both written and spoken).
- 8.1.4 A registered person should consider whether the client requires any special facilities, for example, where their mobility is impaired.

Suitability of investments

- 8.1.5 A registered person should take extra time to explain in detail the specific advantages and disadvantages of their investment recommendations or proposals to a client.
- 8.1.6 A registered person should be mindful of a client's time horizons and attitude to risk and apply appropriate caution in its approach.
- 8.1.7 A registered person should provide well documented, logical and clear explanations to clients wherever possible taking into account the client's particular vulnerability. This should be demonstrated in key documents such as suitability letters or proposal documents.
- 8.1.8 When dealing with an elderly client, a registered person should be mindful of the likelihood for change in circumstances, for example, are there any health related matters or other issues that could affect the suitability of investments. A registered person should also consider the liquidity of investments or whether there are sufficient cash reserves to cover the possibility of paying private medical fees or nursing home fees etc.

- 8.1.9 In situations where a registered person or an Investment Employee has concerns that a client does not fully understand the nature of an investment or the risks associated with it, the registered person or Investment Employee must not proceed and should seek guidance from the Compliance Officer or a senior member of the registered person.

Other considerations

- 8.1.10 A registered person should consider whether a third party Curator or Power of Attorney may be required and where one has been appointed must consider its own due diligence in relation to that third party.
- 8.1.11 A registered person will also need to be mindful as to how they communicate with the client in relation to them being treated as a VP. The client may not accept or recognise that they could be deemed a VP, the registered person should be sensitive to the client's perspective and seek to avoid causing offence.

9 What systems and controls should a registered person have in place to manage vulnerable persons?

- 9.1 A registered person should have well developed policies and procedures to address the key risks associated with dealing with vulnerable persons and to set out the expectations of its employees. This should help to ensure a consistent and diligent approach is adopted across the organisation.
- 9.2 Additional sign off should be considered at appropriate stages of the investment process, including, for example, new business application and issuing suitability letters or proposal letters. This might include a peer review, compliance review or Senior Manager/Director review.
- 9.3 A registered person should consider its central recording of VPs across the organisation and its reporting of such to relevant parties such as an Investment Committee, Compliance function or the Board. A registered person should also consider how it monitors any management information gathered to identify the root cause of any issues that might exacerbate vulnerability.
- 9.4 A registered person should consider offering cooling off periods following the provision of advice, suitability letter or proposal letter, prior to an investment taking effect.
- 9.5 A registered person should consider vulnerable persons as part of its general business risk assessment under paragraph 3.1.3.1 of the IB Code.
- 9.6 A registered person should monitor the implementation of its VP strategy on an ongoing basis.
- 9.7 A registered person should record any additional measures that it has undertaken to assist a client and ensure that its records are accurate and would hold up to external scrutiny.

10 JFSC's expectations of a registered person in relation to vulnerable persons

- 10.1 As noted above, the level of a client's vulnerability can vary depending on their personal circumstances, so it is important that procedures are also in place to regularly re-assess the circumstances of individual clients so that registered persons can adapt their approach accordingly.
- 10.2 In addition to having appropriate policies and procedures in place, a registered person should ensure that all staff, and in particular those providing investment services, are fully aware of the policies and procedures that are in place in respect of vulnerable persons and receive appropriate training in this regard. The JFSC expects treating all customers fairly, and ensuring positive client outcomes, to be embedded in the culture of all registered persons.
- 10.3 Further to the addition of a specific reference to vulnerability within paragraph 2.5 of the IB Code, the requirement for a registered person to provide a vulnerable client with appropriate care is also implicit in a number of existing requirements of the IB Code, for example:
- Principle 1 – A registered person must conduct its business with integrity;
- Principle 2 – A registered person must have the highest regard for the interests of its clients; and
- Principle 3 – A registered person must organise and control its affairs effectively for the proper performance of its business activities, and be able to demonstrate the existence of adequate risk management systems.
- 10.4 Failure by a registered person to establish and adhere to policies and procedures in relation to VPs will be treated by the JFSC as a breach of the IB Code.
- 10.5 In addition to having policies and procedures in place in respect of its own dealings with VPs, the JFSC would also expect a registered person to have policies and procedures designed to detect and prevent the facilitation of potential instances of VPs suffering financial losses as a result of a third-party attempting to exploit their vulnerabilities. Paragraph 3.2.1.5 of the IB Code of Practice specifically requires that systems are in place to enable management to guard properly against involvement in financial crime, including, amongst other matters, fraud.

11 Conclusion

- 11.1 This guidance note is not intended to provide an exhaustive list of the characteristics of VPs, or the measures which should be adopted by a registered person when dealing with VPs. It is instead intended to prompt a registered person into giving consideration to the strength of their existing policies and procedures in this area, and where appropriate taking action to address any shortcomings.
- 11.2 The treatment of VPs will be an increasing area of focus for the JFSC moving forwards and will be actively assessed as part of the JFSC's on-site examination programme and particularly examinations focusing on investment suitability. Given the growing prevalence of this matter, a registered person will need to be able to demonstrate its developed strategy, documented approach (including implemented policies and procedures) and tangible actions taken to address this area of regulatory interest.