

Elder Abuse Prevention Project

Office of Senior Victorians

The Mismanagement & Misappropriation of Older People's Assets: How can the Financial Service Sector help?

A 'Roundtable Discussion', 3 November 2005.

'Beliefs about reciprocity, obligations to help one's children when in difficulty and expectations regarding future inheritance all combine to perpetuate an acceptance of financial abuse by future beneficiaries as disappointing but not criminal behavior..... perpetrators of financial abuse justify their behavior on 3 grounds:

I deserve it, I need it or they can afford it. (Robinson et al.,(2003).

1. Introduction

This paper has been prepared as a background paper for the 'Financial Abuse Roundtable', organised by the Elder Abuse Prevention Project, Office of Senior Victorians (OSV).

The issue of the financial exploitation and abuse of older people by family and other trusted people is only emerging as a main stream issue in Australia. This form of abuse although widely recognized as the most common form of abuse, has received less attention compared with other types of elder abuse, Nerenberg,(2000).

Over the next 20 years in Australia, billions of dollars in assets will be transferred from older to younger generations. The extent of this intergenerational asset transfer opens up the opportunities for exploitation, defrauding and acting in a manner not in accordance with the wishes and timing of the older person. Limited research is available to inform and guide approaches to this issue.

This paper summarises the issue and defines some matters that need to be explored further. It has been prepared as a background paper on this issue. OSV acknowledges the work of Council on the Ageing Victoria in the preparation of this paper.

2. What is Financial Abuse?

The major research on financial abuse in Australia, conceptualizes such actions as behaviors at one end of a continuum of practices related to the management of the assets of older people by family members or friends. (Robinson, Tilse and Setterlund, 2003).

Financial abuse is defined as, 'the illegal or improper exploitation or use of funds or resources of the older person.' WHO,(2002). Financial abuse is one of six recognized types of elder abuse. It is distinguished from other forms of fraudulent activity towards older people, by the abuse being committed by a family member or a person in a trusted relationship with the victim. The accepted international definitions do not include victimization by strangers within the definition of elder abuse because of the lack of a trusting relationship.

Examples of financial abuse include:

- Taking, misusing or using, withholding knowledge about or permission in regard to money and property.
- Forging or forcing an older person's signature.
- Abusing joint signatory authority on a blank form.

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- Misusing ATMs and credit cards.
 - Cashing an older person's cheque without permission or authorization.
 - Misappropriating funds from a pension.
 - Getting an older person to sign a will, deed, contract or power of attorney through deception, coercion or undue influence.
 - Persuading an older person to change a will or insurance policy to alter who benefits from the will or policy.
 - Using an authorized power of attorney not in the interests of the older person.
 - Negligently mishandling assets including misuse by a caregiver.
 - Promising long term or lifetime care in exchange for money and property and not providing such care.
 - Overcharging or not delivering care giving services.
 - Denying access to money or property.
 - Getting an older person to go guarantor without sufficient knowledge to make an informed decision, *Hafemeister,(2003)*.

The other significant point about financial abuse of older people is that cultural expectations also determine whether a transaction is abusive. Attitudes about the legitimacy of a transfer may reflect expectations within a given culture that older people will share their resources while other cultures reject this notion, Brown,(1989), Moon,(2000),

3. The Nature of Financial Abuse

One of the distinguishing features of this form of abuse is that it occurs with the tacit acknowledgement and consent of the older person in the majority of instances, *Hafemeister,(2003)*.

It is recognized that it is difficult to distinguish an unwise but legitimate financial transaction from an exploitative transaction resulting from undue influence, duress, fraud or a lack of informed consent, Tom,(2001). It can be difficult to distinguish between abusive conduct and well-intentioned but poor, confused or misinformed advice and direction, Dessin,(2000), Langan and Means,(1996).

Evaluating whether financial abuse has occurred has been described as a complex and subjective determination, Bernatz et al.,(2001). Further complicating

the recognition of financial abuse is that both the older person and the victim may feel that the perpetrator has some entitlement to the older person's asset, Dessin,(2000). Older people may feel a desire to compensate their carers or benefit their heirs.

It is difficult to discern a transfer of assets made with consent from an abusive transfer, Wilber and Reynolds,(1996). Conduct that began in the person's best interests may become exploitative over time. For example, perpetrators start off with good intent but misappropriate funds as the older person's cognitive abilities decline. Several studies have found that financial abuse is a pattern of behavior rather than a single event and generally occurs over a lengthy period of time, Wilber and Reynolds,(1996).

Robinson, Tilse and Setterland, (2003), in one of the leading research projects in Australia on financial abuse, conceptualize financial abuse as behaviors at one end of a continuum of practices related to the management of the assets of older people by family members or friends who are considered to be like family.

Their on-going research involves an examination of the perspectives of 127 older people and family members and the management of their finances. They argue that a number of the 'taken for granted' practices at best place the older person at risk of financial victimization and at worst constitute financial abuse. They found abusive asset management practices in 16 of the 127 people interviewed, that is 12.6%. Their study also interviewed 21 allied health professionals involved in their 127 cases.

They argue that the rationales that facilitate abuse include a false sense of entitlement to the assets of older people by the abuser, devaluing the rights of the older person and putting the abusers own needs before the rights of the older person. They argue that professionals intervene to protect the older person rather than pursuing strategies to have the offender brought to the attention of the relevant authorities.

They make the point that victims of financial abuse are likely to explain the behavior as a result of personal or financial circumstances rather than define such behaviour as a criminal offence. 'Beliefs about reciprocity, obligations to help one's children when in difficulty and expectations regarding future inheritance all combine to perpetuate an acceptance of financial abuse by future beneficiaries as disappointing but not criminal behavior.

They offer the analysis that perpetrators of financial abuse justify their behavior on 3 grounds, '*I deserve it, I need it or they can afford*'.

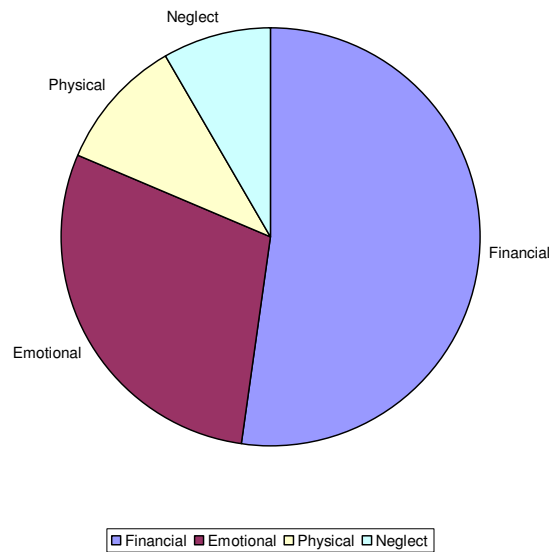
One of the important issues in understanding financial abusers' behaviours, is that they may read into an older person's words or behaviors consent to a conveyance than a more objective perspective would not.

4. The incidence of financial abuse amongst older people

Precise figures on the incidence of financial abuse of people aged 65 years and above are not available. Antidotal evidence suggests that this type of abuse accounts for approximately 50% of the projected 20,000 case of elder abuse in Victoria, based on 2004 figures. The Elder Abuse Prevention Unit in Queensland operates one of the most developed help lines on elder abuse. Their data indicated that financial abuse was noted in 50% of their calls. In a 7 month period, the service dealt with 59 calls in regard to suspected abuse of \$8.2 million.

Abuse reports from other specialist programs also indicate that financial abuse is the most prevalent form of reported elder abuse. Table 2 provides a picture of the relative proportions of the different types of abuse based on Canadian prevalence rates for financial abuse.

Table 2: Breakdown by Abuse Type



In a study undertaken by an Aged Care Assessment Team on the Central Coast in NSW in 1999, financial abuse made up 44 per cent of the 72 cases of client abuse studied. They found that financial abuse was more likely to be perpetrated by children (50 per cent) or others (44 per cent) than by spouses (six per cent). They also found that less than half of financial abusers lived with the victim while nearly all non-financial abusers lived with the victim.

5. Population groups Vulnerable to Financial Abuse

The literature identifies 2 specific groups as being more vulnerable to financial abuse.

Women 75 + with assets who live alone.

Some women in this group may not have handled their financial affairs as their husbands\partners handled the finances. When their husbands\partners die or lose the capacity to manage their finances, these women make good targets for perpetrators who offer 'help' but instead exploit available assets.

A range of studies have found that a lack of familiarity with financial matters enhances the likelihood of financial abuse, (Choi et al 1999; Choi and Mayer, 2001; National Committee for the Prevention of Elder Abuse 2001). Changes in, and unfamiliarity with electronic transactions add to this vulnerability.

People with Dementia

There is evidence that suggests that the presence of cognitive impairments is also a factor in vulnerability to financial abuse. Dementia and other cognitive impairments can lead to difficulties in understanding the financial details or implications of particular actions. People with cognitive impairments without a family member or trusted other to assist them can be more vulnerable to predatory financial abusers.

6. Characteristics of Perpetrators

Teuth (2002) identified two types of financial abusers. The first type consisted of individuals with low self-esteem, substance abuse, financial difficulties or mental health issues. This group do not deliberately set out to financially abuse but passively take advantages of opportunities that present themselves.

The second more aggressive type of perpetrator deliberately sets out to defraud. Such perpetrators identify victims, establish power and control over them and attain the elder's assets using threats, intimidation and other forms of psychological abuse. Such individuals may have an antisocial personality disorder and have little regard to the rights of others. In a typical scenario, the victim was identified as impaired or vulnerable; the victim's trust is secured by being friendly and helpful in providing assistance. The victim is made passive and comfortable and then isolated; and finally the perpetrator takes possession of assets by employing psychological abuse. (Teuth 2000)

There are also a number of perpetrators' characteristics linked relatively uniquely to financial abuse in comparison with other types of elder abuse. These are:

- The perpetrator may stand to inherit assets and feel justified in taking an advance or in exercising control over assets that are perceived to be almost or rightfully the perpetrators own,(Dessin 2000).
- When the perpetrator is an heir, she\he may conclude that pre-emptive steps are necessary to prevent their inheritance from being exhausted in paying for medical or other expenses.
- Due to a prior negative relationship with the older person, the perpetrator may feel a sense of entitlement to these resources as payback for prior exploitation or abuse.
- The perpetrator may be motivated by a sense that he or she should be reimbursed for having carried a substantial care-giving burden for the victim.
- The perpetrator may conclude that the older person has more assets than they need and the perpetrator too few and that the perpetrator is entitled to a share of the victim's assets, (Quinn 2000.)

7. Substantiating Financial Abuse

Several studies have indicated that high levels of reports of financial abuse are not substantiated following investigation. For example an American study of reports to an Adult Protection Service in 1996 found that only 44.5% of the reports were substantiated, (Hafemeister, 2003).

There may be a discrepancy between how an older person perceives an act and how a third party perceives it. Shiferaw argues that individuals who report elder abuse may be influenced by circumstantial evidence that is not confirmed on investigation (Shiferaw, 1994). An older person may consider a financial gift as a reward or kindness for services rendered while an outsider may consider the gift out of proportion to the nature of the service or kindness. Judgments about abuse are highly subjective. Because professionals are often assigned responsibility for reporting and investigating abuse, it is important that a professional's assessment takes into account the older person's perception of the act. (Marshall 2000.)

Many people may interpret an older person's words or behaviour as consent to a transaction that a more objective perspective would not support. The recipient of a gift may argue that the older person gave implicit or explicit indications that the individual be given certain assets. Because of the informal and private setting in

which such transfers are purportedly made, transfers made in good faith may be ill-informed but not represent financial abuse.

8. Responses to Financial Abuse of Older People

Responses to financial abuse of older people fall into two categories. Preventative strategies that aim to avoid such abuse and investigative strategies that focus on investigating whether abuse has occurred and implementing remedial action to address the abuse. Some of these are listed below.

8.1 Preventative Strategies.

8.1.1. Reducing social isolation.

Reducing social isolation has been perceived as an important preventative factor for elder abuse. Family members have been identified as the most likely perpetrators, however, anecdotal reports suggest such abuse is not the result of a conspiracy amongst relatives but rather represents the actions of a single family member. Greater involvement of family members and members and friends of the elderly person can help prevent or remedy this situation.

8.1.2. Structuring financial transactions to reduce the possibility of abuse.

A strategy that has been recommended by some reports is the structuring of financial transactions so as to eliminate the temptation of abuse. A range of options are suggested within this strategy. These include:

- regular checks being directed to the bank,
- routine bills being paid automatically or by arrangement by a trusted friend or family member,
- asking a friend to review all papers before they are signed when money is to be transferred;
- when assets are transferred or planned to be transferred, documenting the arrangements in written document signed by both parties.

8.1.3 Screening Caregivers and live in staff

Another strategy that is suggested by some commentators is that care should be taken with screening caregivers and live-in staff. References should be checked and the person carefully screened so that engagement of predatory caregivers who try to isolate the older person and build a dependent relationship is avoided. In Britain, legislation was introduced in April 2004 setting up a national register of elder abusers in recognition of the impact of some individuals who persistently prey on older people in a serial manner, moving from district to district.

8.2 Investigative and remedial Strategies

8.2.1 Administrative Law (VCAT)

VACT has a wide range of power in relation to financial abuse. These include power to appoint an administrator and/or guardian and power to investigate suggested financial abuse. However, its powers in this area are limited to people who have a disability as defined under the Act.

8.2.2 Civil Action

Older people who are financially abused, have a right of seeking civil action to remedy the abuse. However, civil litigation to redress financial abuse by aggrieved older people has been infrequent. A number of difficulties have been identified in relation to civil remedies. These include the standard of proof required and the evidential difficulties where the claimant has cognitive or frailty difficulties.

9. A Role for the Banks and the Financial Sector.

In the United States and Britain, some banks and financial institutions have taken significant initiatives in addressing financial abuse. One of the most successful examples of bank involvement in monitoring and identifying financial abuse amongst older people is in the American State of Massachusetts. In this State, Government agencies worked collaboratively with the banking industry body and specific banks in tackling financial abuse. This involved the State Government and the banks working together to teach bank employees how to recognise and report financial exploitation of elder customers.

The strategies used in Massachusetts included training on who commonly commits financial exploitation, training on typical scenarios of such abuse, strategies for detecting financial abuse and a model protocol for action. Other strategies include instructions on telling customers about good financial practices to prevent financial abuse. This approach has been replicated on a smaller scale in New York, Kentucky California and Washington.

One of the difficulties for the banks in addressing financial abuse has been the restrictions that privacy laws place on their role. One of the strategies for addressing this has been the introduction of advanced directives by clients that specifically permitted banks to notify account holders and other name parties of activity that is inconsistent with the account holder's usual banking patterns.

10. Solicitors

Another industry sector that may be well-positioned to identify and respond to potential financial abuse of older people is solicitors. Solicitors undertake significant roles for older people and their families in drawing up wills, powers of attorney and a range of other legal documents. Solicitors, if properly informed and aware of the potential of financial abuse, can play important roles in advising their clients, in ensuring that their instructions are from the client with their informed consent and monitoring out of character or sudden changes in wills and asset distribution.

Another suggestion has been that when drawing up powers of attorney or other legal documents, proactively advising clients to limit the authority granted when establishing a power of attorney. They can play a constructive role in cautioning their client or encouraging their client to make an informed choice.

A further suggestion has been that when an administrator is appointed, there is a requirement for them to report annually to an outside party of the financial transactions undertaken including a listing of income and expenses.

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