



Understanding elder financial abuse: exploring promising strategies to counteract the problem.

Dr. Amanda Phelan

Co-Director National Centred for the Protection of Older
People



What is financial abuse of older people?



- Financial abuse (FA) includes ‘theft; fraud; exploitation; pressure in connection with wills, property or inheritance or financial transactions; or the misuse or misappropriation of property, possessions or benefits’ (HSE 2011:15)

- Lack of a universal operational definition (Setterlund et al 2007, Lowndes et al. 2009, Centre on Policy for Ageing 2008, 2010).



- Terminology: financial exploitation (Fitzwater & Puchta 2010), financial mismanagement (Laumann et al 2008), fiduciary abuse (Aziz 2000), material abuse (Wolf 1998) and social vulnerability (Pinsker & McFarland 2010).



Financial Abuse



NATIONAL CENTRE FOR THE PROTECTION OF OLDER PEOPLE (NCPOP)

- Internet scams and phishing.
- Direct payments/individual budgets which emphasise issues of personalization, but can force the older person to manage large sums of money (Centre for Policy on Ageing 2010).
- Perpetrators: trusted family member or friend, abuse of power of attorney.
- Stranger: distraction crimes, internet fraud, telemarketing or unsolicited offers of work (ie house repairs).





Prevalence FA

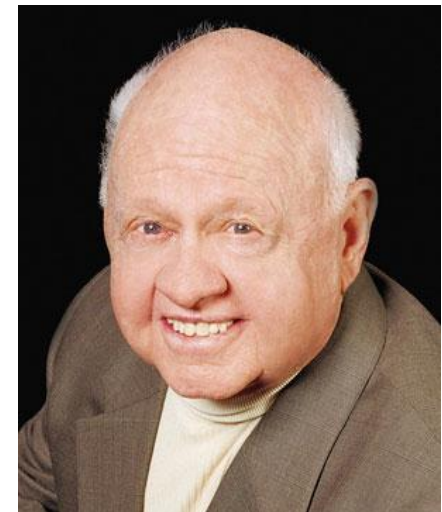
- Commonest form of abuse (Naughton et al 2010, Acierno et al 2010, Lifespan of Greater Rochester Inc. et al 2011).
- Second most common form of abuse (O' Keefe et al.2007, Amstader et al. 2011).
- Home environment.



• Underestimations: 1:5 (Hannigan et al 1998), 1:100 (Malks et al 2003).

Financial Abuse

- Although financial victimisation is not unique to older people and old age in itself does not predispose to people being deceived, particular age related factors may contribute to increased vulnerability





Consequences

- **Individual:** Devastating as limited means to draw upon.
- Financial insecurity, depression, stress and a compromised independence .
- An estimated \$2.6 billion is lost per year due to financial abuse (US) (MetLife Mature Market Institute 2009).
- **Society:** increased financial dependency from government welfare systems (Setterlund 2001, Otto et al 2003)





Conceptualisations

- a) the quality of the older person-perpetrator relationship, b) the vulnerability of the older person, c) understanding of the benefits of the relationship and how such benefits are realised and d) assessment of the process and characteristics of the financial abuse. (Wilbur & Smith 1996)
- A financially vulnerable older person and an exploitive relationship between the perpetrator and older person (Kemp & Mosqueda 2005).
- Routine activities theory:, suggest the use of ‘asset managers’ (Setterlund et al 2007)

Financial Abuse


- Conrad et al (2011) developed a conceptual model and map of financial exploitation. The conceptual model presents a particular hierarchical order, ranking the types of financial exploitation, the older adult's condition, links to previous conceptual models and evaluation procedure.



Detecting Financial Abuse

- Repetitive and secret nature.
- 'transferred' to prevent their use for nursing home care (Conrad et al 2011, King et al 2011). Entitlement (Conrad et al 2011). Psychological pressure can be difficult to identify.
- Gradual, unremarkable & consent.
- Trustworthy person
- Social isolation
- Intent & blurred boundaries (Lowndes et al 2009).
- Lack of banking proactivity
- Respect for financial autonomy
- 'irrational trust' (Teuth 2000), inability to say 'No' (Rabiner et al 2004).
- Embarrassment, fear of repercussion, cognitive impairment, a fear of losing independence or a belief that the report will be ignored.



 financial abuse may not leave visible signs



Possible Indicators of FA (NCEAN 2011)



NATIONAL CENTRE FOR THE PROTECTION OF OLDER PEOPLE (NCPOP)

- sudden changes in bank account or banking practice, including an unexplained withdrawal of large sums of money by a person accompanying the elder;
- the inclusion of additional names on an elder's bank signature card;
- unauthorized withdrawal of the elder's funds using the elder's ATM card;
- abrupt changes in a will or other financial documents;
- unexplained disappearance of funds or valuable possessions;
- substandard care being provided or bills unpaid despite the availability of adequate financial resources;
- discovery of an elder's signature being forged for financial transactions or for the titles of his/her possessions;
- sudden appearance of previously uninvolved relatives claiming their rights to an elder's affairs and possessions;
- unexplained sudden transfer of assets to a family member or someone outside the family;
- the provision of services that are not necessary; and

an elder's report of financial exploitation.





Older Adult Financial Exploitation Measure (Conrad et al 2010)



NATIONAL CENTRE FOR THE PROTECTION OF OLDER PEOPLE (NCPOP)

- Originally 82 items, then 79- 6 clusters: theft and scams, financial victimisation, financial entitlement, coercion, signs of possible financial exploitation and money management.
- Enhanced professional decision making in suspected cases of financial abuse.
- Reduced to 25 items



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive





Legal Issues

- Protective and ameliorative
- May fall short of criminal law standards but may encompass a breach of civil legal responsibilities (Smith 1999)
- Ireland: Power of Attorney Act (1996), Scheme of Mental Incapacity Bill (2008), Social Welfare Act (2007)





Carroll v Carroll [1999] 4IR

- *‘ a solicitor or other professional person does not fulfil his obligation to his client or patient by simply doing what he is asked or instructed to do. He owes such a person a duty to exercise his professional skill and judgment and he does not fulfil that duty by blithely following instructions without stopping to consider whether to do so is appropriate. Having done so, he must then give advice as to whether or not what is required of him is proper.’*





Bourke v. O'Donnell & Ors IEHC 348 [2010]

- Absence of appropriate action
- *'circumstances of the transaction itself were such as should have raised substantial doubt as to the plaintiff's capacity to give instructions'*.
- The issue of undue influence to engage in the banking transaction was also highlighted although it is difficult to articulate and prove



United States

- The Financial Abuse Reporting Act, SB 1018 in California (2005) and Public Act 96-1195 (2011) in Illinois).
- Many American states have legislation regarding reporting of elder abuse, but the categories of people who are required to report can differ between jurisdictions.
- Mandatory reporting vs voluntary reporting systems appear to be both more successful and agreeable to financial institutions (Hughes 2003a, London Campaspe Community Legal Centre (LCCLC) 2008).



Financial agencies

- a breach of privacy, confidentiality of the client and defamation of the alleged perpetrator through reporting the suspected financial abuse have all been identified (Choi et al. 1999, Hughes 2003a).
- Prior written consent for reporting, voluntary reporting by banking institutions and the introduction of immunity provisions when suspected financial abuse cases are reported in good faith and with sufficient supporting material (LCCLC 2008) .

• **Financial Institutions:** Experience, detect unusual patterns, education



Changes to banking practices



NATIONAL CENTRE FOR THE PROTECTION OF OLDER PEOPLE (NCPOP)

- Withdrawal of cheque accounts?
- Move to engage with new public sector and welfare electronic payment systems.
- Technological advances may pose challenges



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive





Financial Abuse responses



NATIONAL CENTRE FOR THE PROTECTION OF OLDER PEOPLE (NCPOP)

- **Oregon Experience:** confusion on a formal course of action: Multi-media training (Kaye & Darling 2000)
- Retiree Response Technical Team (R2T2)
- Maine reporting project.
- Financial Abuse Specialist Team (FAST) in California (Orange County), & Santa Clara USA
- recovered \$91.7 million in assets for older people (Office of County Executive, Santa Clara, 2003).
- Financial Literacy (NICE-Canada)





Money management programmes



NATIONAL CENTRE FOR THE PROTECTION OF OLDER PEOPLE (NCPOP)

- Assistance with routine tasks such as paying bills to more complex tasks such as general budgeting and management of banking accounts
- The American Association of Retired Persons, the Reingold Institute in New York, the Elder Abuse Prevention's Money Management Programme in California and the Massachusetts Money Management Programme provide specific assistance for older people and training for volunteers





Conclusion



NCPOP

NATIONAL CENTRE FOR THE PROTECTION OF OLDER PEOPLE (NCPOP)

- Complex
- Proactive approach=deterrent
- Prevention, detection, mediation, amelioration
- A multi-disciplinary approach & specialist teams.
- Financial institutions and legal system
- Legislation with penalties
- Education (professionals, older people, society) & routine discussion.
- Independent assistance and advocacy



Assisted with assets rather than creating a system which facilitates the removal of financial autonomy.