

The need for a criminal offence of elder abuse

Briefing Paper

This briefing paper outlines the failure of the Criminal Justice System to adequately protect older victims of elder abuse, and explains the need for an aggravated offence.

Older victims are hidden in our Justice System

At the start of 2016 Action on Elder Abuse put forward Freedom of Information requests to the police, the Crown Prosecution Service, the Ministry of Justice, and HM Courts and Tribunal Service. The intention was to find out what information was being gathered about prosecutions relating to abuse and neglect, about the success of the CPS policy on prosecuting crimes against older people, and about the extent to which Special Measures to support vulnerable older victims was being used.

The response was worrying. Nothing was monitored. Little was reported. A number of police forces were unbelievably unhelpful. The impression was that older victims did not appear to matter. They were hidden.

Older victims do not get justice

Over a period of several months we looked at media reports of court cases where older people were victims, primarily victims of abuse and neglect. What we found was that, regardless of the seriousness of the offence and regardless of the impact on the victims, perpetrators rarely if ever went to prison. **It was far more likely that abusers would receive suspended sentences, community service and/or a fine.**

Older Victims do not get justice

But the Freedom of Information requests also highlighted the use of police cautions as a means of avoiding the cost and work associated with prosecution.

A police caution is NOT a criminal conviction.

One police force told us that they had investigated 76 instances of elder abuse, and had consequently issued 76 police cautions. Not a single case made it to court.

What is elder abuse?

Elder abuse involves physical assault, sexual assault and harassment, coercion, threats and intimidation, theft and fraud, and neglect of the most horrendous types.

And yet, it is labeled 'abuse' rather than crime, or 'poor practice' in care homes, or 'serious incidents' in hospitals. Any label rather than face the reality that these are crimes being committed, whether or not they are prosecuted.

Did the cases justify suspended sentences?

Mary Slade, 87 years of age, died the day before her 'carer' was sentenced for stealing more than £7,000 from her. She had felt it important to prosecute because the thief – who had worked for her for nine years – had claimed innocence of the crime. *Twelve month suspended sentence, and 240 hours of community service.*

One 88 year old woman was slapped and, on Christmas Day, another 93 year old was struck,

pinched and had her check twisted. And then she was later punched. *180 hours of community service.*

The 'carer' lost her temper and slapped the 86 year old man, before striking him on the head with a walking aid. *200 hours of community service.*

She slapped the 82 year old woman, twisted her arm behind her back and sprayed her face with water. And she slapped her on the body. *Jailed for six months, overturned on appeal. 200 hours community service/2 years probation.*

"We are shattered by this. She assaulted my gran who has dementia and was at her most vulnerable, in the very place where she should have been safe and all she gets is community service. It is a disgrace.

"As a family we just can't get our heads around the decision. She has been found guilty of abusing my gran twice now and she is still not going to go to jail.

"We feel completely let down by the justice system. It seems they are protecting the abuser but who is going to protect my gran?"

A carer who stole from two old people forced them to go into separate emergency care, after being married for 63 years. He died without ever seeing his wife again. *Six month suspended sentence, and 300 hours of community service.*

84 year old Freda Jobson does not have capacity and was bed bound with pressure sores. She was ill treated by three carers. A hidden camera, captured the abuse.

The footage showed carers mimicking the old woman's groaning as they laughed and swore. They asked her if she was a witch and if she had ever practiced black magic. One 'carer' removed a bandage used to cover a bedsore on the woman's elbow and wrapped it around her head while laughing at her. The carers in question admitted their actions.

Despite the fact that these actions constituted a crime under section 44 of the Mental Capacity Act 2005, the police decided to issue a caution rather than pursue a prosecution.

Action on Elder Abuse made representations to the Chief Constable, the Chair of the Adult Safeguarding Board, and the Attorney General.

After several months and repeated representations the police reversed their decision and placed the case with the Crown Prosecution Service, who eventually decided to prosecute.

Twelve months later, in April 2016, the carers were found guilty, received suspended sentences and were required to pay compensation.

Suspended sentences. Despite the video evidence, their own admission, the breach of trust, and the frailty of Freda.

This is not justice.

Why do we need a new criminal charge of elder abuse?

The number of older people in our population is set to rise significantly, to around 19m in just over 30 years, with an increasing number of 'very' old people. The 2007 UK Study of Abuse and Neglect of Older People identified that 8.6% of older people living in the community experience elder abuse (*suggesting 1.6m victims by 2050, unless we have a significant impact on what is happening*). This is in addition to the scandalous experiences of older people in hospitals and care homes, which appear to

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What are the key points to consider?

1. Victims of elder abuse are often more vulnerable than others – they are often in no position to take action to defend themselves
2. The impact of abuse on older people is often greater than the impact on younger victims
3. Existing laws to protect older people from abuse and prosecute perpetrators are not strong enough
4. Older people are less likely to report abuse as it is primarily committed by family members (resulting in lower prosecution rates)

Don't we have adult protection legislation already?

There are different systems and legislation in each of the four nations of the UK for intervening in abusive situations and protecting adults at risk of abuse. However, where it exists, none of this legislation is focused on prosecuting abusers and, even where legislation has been introduced to enable prosecution, it is limited in scope. In the main, current legislation is focused on establishing protection infrastructure and giving social workers powers to intervene, but not to prosecute, in abuse situations.

Visitors said the room smelled of cigarette smoke, urine and faeces, the walls were dirty, the floor sticky and there were cigarette burns on the floor. A chair was covered in dry faeces and cigarette burns, the bed was broken, had no bedding and a stained mattress, and wardrobes were not secured to the wall. A "filthy and encrusted" urine bottle stood on a dirty table next to a cup of tea, while there was a bowl full of urine and faeces under the table. Mr Hinnells wore clothing that was dirty and soaked in urine, his hands and face were dirty, he had strong body odour and his clothes bore marks of cigarette burns.

The judge directed the jury to find the six defendants not guilty, and permanently dismissed the jury in the case of the last two defendants. No one else was charged.

continue despite all the rhetorical commitments to change and improvement.

This needs to be considered in the context of under-reporting of elder abuse; AEA estimates no more than 1:10 cases reach the attention of adult protection.

This is despite the fact that older people represent a growing percentage of those referrals, (In England, from 61% five years ago to 64% on 2014/15).

5. The current Criminal Justice System is not fit for purpose
6. Elder abuse is rarely discussed – criminalisation would increase public awareness and change perceptions of justice
7. Criminalisation of elder abuse would provide additional statutory protections to older people
8. Abuse in care settings is not being adequately dealt with
9. Elder abuse is not given the same political attention as child abuse

Isn't an elder abuse law creating the image that all older people are helpless?

Does domestic abuse legislation suggest that all women are helpless? Or Hate Crime legislation suggest that all people from minority communities cannot protect themselves?

This is an argument that is only put forward when we seek legislation to protect our older generations. **Elder abuse victims do not choose to be abused.**

Legislation – we need to catch up with other countries:

Elder abuse is a human rights violation and it is an infringement of Article 25 of the EU Charter of Fundamental Rights, which recognises and respects the rights of older people to lead lives of dignity and independence, and to participate in social and cultural life. The UN Plan of Action on Ageing, adopted in 2002, put the issue of elder abuse firmly within the framework of universal human rights, and on 19 December 2011 the General Assembly of the United Nations adopted a Resolution on Ageing, which addressed neglect, abuse and violence against older persons.

Additionally, many countries have specific legislation in place to protect older people from abuse, including:

USA (all fifty States), Canada
Japan, South Korea, Israel,
Slovenia

The context of elder abuse – a problem hidden in plain sight:

Various statutory bodies in the UK are failing older people by not having recording and monitoring measures in place for incidents of elder abuse. Despite that we are able to identify some startling statistics and projections:

- Between 500,000 and 800,000 older people are subject to abuse and/or neglect within communities in the UK each year.
- This could rise to 1.6 million by 2050.

- As little as 6% of victims report abuse to the police.
- In 2013/14 there were 28,000 substantiated adult protection referrals regarding elder abuse and yet there were only 3,317 referrals by police to the CPS in England and Wales.
- In 2013/14 18,932 crimes against people aged 60+ were recorded in Wales and yet there were only 194 successful convictions.

Elder Abuse is a Crime, now let's make it one

In recognising that abused older people are deserving of special consideration and protection Parliaments and Assemblies should introduce legislation to codify certain criminal acts under the aggravated offence of 'elder abuse'.

An aggravated offence is essentially an enhanced criminal charge, which takes into account additional factors that were involved in the circumstances surrounding the alleged offence.

Elder abuse should include any of the following: Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.

Full details on our website, where you can download the Report. www.elderabuse.org.uk

We also are calling for:

- Mandatory Reporting of elder abuse
- A crime of theft or fraud of an older person
- A court order to prevent further abuse
- A power to access and speak to a potential victim of elder abuse, the general right of access by family and friends, and wrongful isolation

If you support our campaign, then please support us in our call.

Sign up to the petition calling for a crime of elder abuse. You can access the petition through our website at: www.elderabuse.org.uk

Write to your MP telling him/her that you want a crime of elder abuse. You can find out the details of your MP here, <https://www.writetothem.com>

Tell others. Get others involved. Because the abuse of older people has to stop. Now.