

No. 132

Fraud & Financial Abuse of Older Persons

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At the 42nd Plenary Meeting of the General Assembly of the United Nations in 1992, it was decided to observe 1999 as the International Year of Older Persons. One of the principles which the General Assembly identified was that older persons should be able to live in dignity and security and be free from exploitation and physical or mental abuse. In this paper, consideration is given to the threats that face older persons in terms of their vulnerability to acts of fraud and financial abuse. While many surveys show that older people are not defrauded more than people in other age groups, being both aware of the risks and informed of ways in which to avoid them are essential for all people, regardless of their age. Alerting older persons to these issues will help to enable them to live free from the potentially disastrous consequences which fraud and financial abuse can entail.

In one study reported here, relatives were the more likely perpetrators of fraud and one area requiring scrutiny is the use of enduring Powers of Attorney. The development of new technologies for purchasing goods and services (such as the Internet and electronic commerce) creates potential for fraud, as do traditional areas in health care, accommodation services and investment services. This paper lists prevention and control strategies that include legislation, law enforcement, education and information and enhanced reporting.

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One of the stereotypes which surround older people is that they are easy targets for acts of fraud and deception. This stems from a perception that they have declining mental abilities and a dependence upon others due to their physical fragility or mental deterioration. They are also seen as being isolated, often having few friends or family to rely upon, making them vulnerable to those who seek to establish relationships merely in order to steal their money.

As with most stereotypes, this view of older people has some basis in reality and some older people are, indeed, victimised through fraud. Generally, however, the extent to which older persons are defrauded is directly proportional to the vulnerabilities that arise out of the circumstances in which they live. Old age, of itself, does not predispose someone to being deceived and defrauded any more than does gender or nationality, although lack of familiarity with the English language may make some persons more vulnerable to some acts of deception. Indeed, the experiences of a lifetime could enable older persons to detect a fraudulent proposal when it is made, and to avoid its consequences.

It is important to study the victimisation of older persons through fraud, as often the impact of financial crimes may be considerable. Unlike younger people, who are able to "start again" after being defrauded, older people have less time to recoup their losses and often are solely dependent upon their savings to finance their future. Loss of these assets may ruin a person's otherwise

October 1999

ISSN 0817-8542

ISBN 0 642 24127 9



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well-planned retirement. It has also been found that the personal, emotional and psychological consequences of fraud for older persons are much more profound than for younger persons.

As the proportion of older people in the community increases, it is to be expected that the number victimised through fraud will also increase, although possibly not at a greater rate than would be expected due to population changes alone. In 1997, approximately 2.2 million Australians were aged 65 or over, some 12.2 per cent of the entire population. By 2051, this percentage will have doubled (ABS 1999, p. 196).

The Nature and Extent of the Problem

In recent times, research into so-called “elder abuse” has identified financial abuse as one crime to which older persons may fall victim. Financial abuse includes making improper use of an older person’s property or money without his or her knowledge or permission; forcing older persons to change their wills to benefit specific individuals, such as health care providers or relatives; and denying older persons access to their money or preventing them from controlling their assets (Kurrle et al. 1992). Sometimes it is difficult to distinguish abusive conduct from well-intentioned but insensitive behaviour. On occasions, conduct that began in the older person’s best interests may end by being abusive. For example, family members may initially offer helpful advice regarding financial investments, but as the older person’s mental faculties decline, they may take over the entire management of that person’s affairs and misappropriate funds for themselves. Determining the exact point at which abuse or fraud occurs is very difficult, as the circumstances may be unclear and evidence impossible to gather.

Some forms of financial abuse may entail criminal con-

duct, whilst others may be oppressive, unwanted and unacceptable forms of manipulation of older persons’ finances which fall short of criminal activity, but which may involve breach of civil legal obligations. Both, however, are worthy of research—often, financial abuse which entails civil consequences only may be a precursor to criminal fraud.

In Australia, fraud is not recognised as a separate legal category of crime (other than conspiracy to defraud). Instead, a variety of property offences may be used to prosecute conduct that involves dishonesty, such as crimes of theft and obtaining a financial advantage by deception. There is a lack of reliable data on the nature and extent of such offences in Australia and the data that do exist rarely include information on the age of the victim. Accordingly, on the basis of official crime statistics, it is not possible to state the precise extent to which older persons have been victimised through fraud and whether the rate of victimisation is greater or lesser than for other age groups. It is also not possible to quantify the extent to which older persons from non-English-speaking backgrounds or older indigenous Australians have been victimised through fraud.

As is the case with domestic violence, reliance upon official crime statistics is problematic where older persons are concerned as many offences may not be reported to the police, particularly those which have been perpetrated by relatives or carers. This may be due to the close personal involvement of the older person and the offender, or to the fear of reprisal if the matter is reported to the authorities. There is also the concern that, if a carer is convicted and imprisoned, there will be no one left to care for the older person. In addition, in some cases, older persons who suffer from dementia and are unable to communicate effectively may not be aware that they have been defrauded and may die without the crime ever being discovered or investigated.

Some empirical evidence linking fraud victimisation with age has been gathered through the use of self-reported victimisation surveys. The results, however, are conflicting, mainly due to a lack of precise data and the inability to distinguish between specific sub-groups of older persons and different categories of crime and abuse.

An early victimisation survey conducted by the Australian Bureau of Statistics found that, as age increases beyond the thirties, the rate of victimisation for offences of fraud, forgery and false pretences decreases (ABS 1975). There is no reason to believe this trend has changed in more recent times. In the United States, Titus and Gover (1999) concluded, on the basis of evidence from a number of surveys, that older individuals are not at greater risk of fraud victimisation. They argued that younger and better educated people may have wider interests, engage in a broader range of activities and have greater consumer participation in the marketplace than other demographic groups, thus increasing their exposure to fraud.

A number of studies have also sought to determine the incidence of financial and other forms of elder abuse. In 1992, a study was published which examined the medical records of 1176 community-based patients over the age of 65 who had been referred to a geriatric and rehabilitation centre in New South Wales in the 1990–91 financial year. Fifty-four cases of abuse (4.6% of referrals) were discovered, with 13 (1.1%) involving material/financial abuse. Another 21 cases involved multiple forms of abuse which could have included financial abuse. In the majority of cases of financial abuse, dependency of the older person was found to be the major associated factor (Kurrle et al. 1992).

In 1995, in rural New South Wales, 20 community nurses and home care workers who had regular contact with older persons were surveyed. From the 598 clients they visited during a one-

month period, they reported 12 cases (2.0%) of financial abuse. The study also found that, as the client's health problems increased in number, so did the extent of the abuse (Cupitt 1997).

Most recently, the Office of the Public Advocate in Western Australia undertook a study of applications made to it, in respect of persons aged over 65, between 1 July 1995 and 30 June 1998. It was found that 141 applications (10%) involved allegations of financial abuse. Relatives were most often the alleged perpetrators, while other relatives most often reported the matter. In 46 applications, allegations were made of bank accounts being misused, while 21 applications concerned property or assets being sold illegally and 31 applications involved allegations of abuse of an Enduring Power of Attorney. Although most allegations could not be substantiated, 34 individuals were found to have perpetrated financial abuse, mostly involving abuse of bank accounts, or arising out of money given or lent to them (Office of the Public Advocate 1999).

Anecdotally, there is evidence that older persons continue to be defrauded and abused financially in a variety of ways which correspond with the activities in which they often engage and the products and services which they frequently use.

Financial abuse by legally-appointed agents

An area of increasing concern is financial abuse carried out by those who act in a fiduciary capacity as legally-appointed agents for older persons. Anyone is able to execute a document known in some jurisdictions as an Enduring (or Protected) Power of Attorney, which confers authority on someone else to act on that person's behalf in the management of his or her affairs. If the donor of the power later becomes mentally incapable, the attorney will still be able to act for that person unless an application is made to a court or Guardianship Board to revoke the power. Such

arrangements are governed by legislation in each State and Territory that ensure that the person granting the power understands the nature of the agreement and how it may be varied or revoked.

Legally-appointed agents are required to act in the best interests of those for whom they act and are not permitted to profit from their agency. Where agents breach such obligations, an action for damages may lie, and in extreme cases, the agent could be prosecuted for theft or obtaining a financial advantage by deception. Although cases are rare, examples occasionally arise (Mathis 1994; Lush 1998).

It is often difficult, however, to discover abuses of this nature as the older person may be incapable of knowing what is being done on his or her behalf, and the matter may only be investigated where a friend or relative believes that something improper has occurred.

Health care products and services fraud

According to the 1995 national health survey, 64 per cent of older Australians living in the community rated their health as good, very good or excellent (ABS 1997). Older people, however, use proportionally more medicines than younger people and visit health care providers more frequently. In 1997-98, the average number of Medicare services provided to Australians aged 65 or over was 21.3, whilst the average for those under 65 was 8.9 (HIC 1998).

One important health condition that may increase vulnerability to fraud is dementia. In 1996, 6 per cent of the population aged 65 and over (134,800) had dementia, with approximately half of those continuing to live in the community (Gibson et al. 1997). As dementia develops, those who suffer from it may be at greater risk of being manipulated and deceived through fraudulent practices, both in the provision of health and medical products and treatments and in more general consumer transactions.

Those with health problems may also be tricked into purchasing worthless remedies and cures for their conditions. Alleged cures for cancer and arthritis, and anti-ageing products, are regularly advertised and now appear on the Internet. Older persons may also be targeted by those selling health care appliances, such as hearing aides or spectacles. Sometimes such appliances are overpriced or ineffective, or they may be prescribed by unlicensed practitioners.

Although most fraudulent conduct carried out in the health care sector results in the government suffering the loss rather than individuals, occasionally older persons themselves may be defrauded. Medical practitioners have, for example, exerted undue influence over patients to leave them bequests in their wills, or have sought to borrow money from patients which they are unable, or refuse, to repay (Smith 1994). One instance currently being investigated by police in England concerned a general practitioner who was charged with murdering 15 elderly female patients, allegedly to secure bequests under their wills. In one case, it was alleged that an 81-year-old patient was murdered after the doctor forged a will that would have made him the sole beneficiary of her £300,000 estate (Jenkins 1999).

Residential care services

In keeping with policy directions set by the Commonwealth Government, there has been a shift away from more intensive types of residential care to home-based care and the use of hostels. However, older persons, particularly those of very advanced years, still make considerable use of residential care facilities and financing such services often requires them to spend the bulk of their savings.

An investigation into Australia's largest nursing home fraud was concluded in January 1997, when a Sydney nursing home operator and pharmacist was convicted of defrauding the Commonwealth. The defendant

had operated five nursing homes and had stolen \$1.7 million in Commonwealth government funding by lodging false claims for costs allegedly incurred in respect of the nursing and personal care of frail aged residents. Claims were made for family members, non-existent employees on the nursing payroll and other staff not involved in nursing or personal care of residents, such as builders, bricklayers and other contractors (Comfraud Bulletin 1998, p. 3).

Private accommodation

Throughout Australia, most older persons now live with families or alone in their own homes. In 1996, for example, 28 per cent of people aged over 65 were living alone in a private dwelling, with 7 per cent living in some non-private accommodation (ABS 1999, p. 198). The policy of de-institutionalisation for those with mental health problems, such as some psycho-geriatric disorders, has meant that considerably larger numbers of older persons continue to live in the community with personal carers.

Living at home alone or with relatives may increase an older person's vulnerability to fraud, particularly where carers are involved in managing the older person's finances. In addition, older persons living at home may be vulnerable to home repair fraud and other deceptive practices in relation to household maintenance. In the early 1990s in New South Wales, for example, a number of pensioners were defrauded by a group of offenders who represented that work was required to repair roofing, install insulation and repair electric wiring. In each case the work was unnecessary and the offenders demanded and received payment before the fraud was detected (Toemoe 1993).

Other products and services

Older persons, like others in the community, may be victimised through fraud when they purchase goods and services and the

nature and extent of their victimisation will depend upon the nature of the goods and services they obtain.

Older persons, and sometimes their relatives, may, for example, be victimised through the purchase of pre-paid burial and funeral services. In Victoria, a company which made improper use of funds pre-paid for funerals was convicted in July 1999 of failure to invest money in accordance with the legislative requirements of the Office of Fair Trading, and was fined \$25,000 (Farrant 1999). The deception may not even be discovered, as relatives of the deceased might not be aware that a pre-paid arrangement had been made.

A wide variety of misleading and deceptive practices occur in the motor vehicle repair industry. They include carrying out unnecessary repairs, overcharging, deceptive advertising and the use of accelerated maintenance schedules. Older persons may be defrauded by such practices in the same way as others, although their lack of familiarity with some of the most recent technological advances in automobile design may make them particularly susceptible.

Telemarketing fraud also remains a considerable problem for older persons, with some studies finding that older persons are more often defrauded through telemarketing scams than younger ones (e.g. American Association of Retired Persons 1997). Another area of increasing vulnerability relates to gambling, prizes and lotteries. Sometimes these may be advance fee schemes in which victims are required to provide funds in order to receive a benefit which never arrives.

Capital investment

Recent government policy has been to encourage those in the workforce to accrue funds throughout their working life in order to provide for their retirement, thus avoiding the need for them to draw on State-funded

pensions. As a result, older persons often have substantial assets to invest and this may make them attractive targets for investment fraud.

In arranging to invest their funds, they often rely on professional advisers—lawyers, accountants and investment advisers—some of whom may act unprofessionally. In one case investigated by the Victoria Police Major Fraud Group in 1996, two clients, a husband and wife aged 85 and 80, provided a sole practitioner solicitor with \$200,000 to be invested on the basis of security by way of a registered second mortgage. The solicitor in question then misappropriated the funds for his own use.

Older people may also be defrauded by the activities of investment brokers, many of whom are unlicensed and unqualified. In one Australian case, an investment adviser who had defrauded his 83-year-old client out of \$83,500—which he then used partly for gambling—was convicted and sentenced to 8 months' imprisonment (ASIC 1998, p. 36).

Information technology

Although the use of computers at home has only become popular relatively recently, many older persons are now making use of them for communications, obtaining information, entertainment and, most importantly, for shopping. In Australia between 1996 and 1997, the percentage of persons aged 55 and over who had used computers from home more than once a week increased 36 per cent to 296,000, with 22,000 of these purchasing goods or services online (ABS 1998). Along with this increased use of information technologies comes an increased vulnerability to the many fraudulent and deceptive practices which exist online. Older persons are not the only ones who are being defrauded through the use of computers, but they may be particularly vulnerable if they do not have a full understanding of the technologies they are using.

Preventive and Control Strategies

How, then, can older persons be protected from acts of fraud, deception and financial abuse?

Legislation

In order to raise awareness of the problem of fraud directed at older persons, and to ensure that cases of deception may be prosecuted effectively, it has been suggested that specific legislation should be enacted to proscribe some of the more flagrant deceptive practices which target older persons.

In the United States, specific legislation has been enacted to make certain telemarketing practices illegal, and in Australia the Australian Competition and Consumer Commission has adequate powers to investigate and prosecute misleading and deceptive practices, whether they affect older persons or others.

Every state in the United States also has legislation proscribing various forms of elder abuse—which may or may not involve traditional forms of criminal conduct—with most jurisdictions also having mandatory reporting provisions (Olinger 1991). Although the criminalisation of elder abuse helps to publicise the problem, and may enable some cases to be dealt with which might otherwise fall outside the scope of existing criminal laws, the role of criminal law in this area is inevitably limited owing to the impediments which victims and others face in detecting and reporting cases.

Law enforcement

Law enforcement agencies have a central role to play, not only in investigating crimes of deception perpetrated against older persons, but also in informing them of the risks and suggesting appropriate fraud prevention measures. Most police services throughout Australia have officers involved in crime prevention who liaise with older persons in the community.

In the United States, so-called “law enforcement geron-

tologists” have been used to work with older persons and community groups to alert potential victims to new schemes and initiate a variety of self-help programs, some of which make use of older persons as volunteers. Such specially trained officers are able to offer information and advice in a constructive way, rather than creating unnecessary alarm which could be counter-productive (Rykert 1994).

Education and information

Titus and Gover (1999) concluded their review of fraud victimisation research by commenting that evidence of prior victimisation is a high indicator of future victimisation. Accordingly, they suggested that information and education on fraud prevention should be specifically targeted at those who have been victimised in the past.

A number of Internet sites now provide information on fraud victimisation and how to avoid it, including the National Fraud Information Centre (<http://www.fraud.org/>) which, as part of its “Elder Fraud Project”, provides information on various fraudulent schemes and, in particular, those which are directed at older persons. The American Association of Retired Persons provides similar information, such as its medicare fraud site (<http://www.aarp.org/medfraud/>), and conducts regular surveys on fraud victimisation of older persons.

Enhanced reporting

Although many surveys have shown that older persons are not defrauded to a greater extent than those in other age groups, older persons should still be encouraged to report their experiences of fraud to the authorities. Only when individual cases come to light can patterns of victimisation be discerned and appropriate preventive action taken. The available avenues of consumer redress should be publicised and the functions of different agencies coordinated in

order to make the process of complaining easier. The use of telephone and the Internet could, for example, be more suitable than travelling to a city office to lodge a complaint.

Statutory authorities

In appropriate cases it may be necessary for a frail or infirm older person’s financial affairs to be managed by an agency, such as an official trustee or guardian. However, the use of such protective agencies, whilst an important safeguard, should not prevent capable older persons from controlling their own lives and finances.

Various other statutory complaints authorities also have a role to play in investigating cases of fraud and financial abuse against older persons. Health provider registration authorities, for example, already have jurisdiction over acts of professional misconduct perpetrated against older health care users and are able to make use of powerful sanctions such as de-registration. Statutory authorities also regulate the activities of lawyers, accountants, investment advisers and those engaged in direct marketing. The effectiveness of such avenues of redress depends, however, on allegations being reported and on the authorities in question being adequately funded to undertake detailed investigations.

Private sector initiatives

Business and professional organisations within the private sector may also be able to assist in the prevention and detection of fraud. In Canada, for example, older persons have begun authorising their banks to monitor their accounts for unusually large transactions or unusual patterns of transactions. The bank is then authorised to raise its concerns with the account holder and to warn of the possibility of fraud. Account holders, however, retain full rights over their accounts and may elect to disregard any warnings given. This scheme has already resulted in one older person being prevented from

losing C\$20,000 through telemarketing fraud following an earlier incident in which C\$40,000 had been lost (Zanin 1998). Similarly, in Massachusetts, a program in which bank employees received special training in the identification of possible cases of abuse of older persons' bank accounts led to the identification of a number of cases of financial abuse (Price & Fox 1997).

Other professionals may also be able to assist in identifying cases of financial abuse. Those authorised to receive statutory declarations and affidavits, or who prepare and witness Powers of Attorney, for example, should undertake their obligations responsibly and ensure that older persons who sign financial and legal documents are fully competent to do so and have not been coerced by family members into disposing of their assets. Medical practitioners who see their elderly patients regularly may be in the best position to know if an older person's mental abilities have declined to such an extent that they are incapable of understanding the effect of documents which they sign. In appropriate cases they should refer the matter to relevant statutory agencies. It might also be necessary in appropriate cases for those who act under a Power of Attorney to prepare an annual statement setting out details of the year's financial activities (Lush 1998).

Conclusions

It is apparent that a wide range of individuals and organisations have an interest in dealing with fraud and financial abuse directed at older persons, but for their initiatives to be most effective, it is necessary for some degree of coordination to take place. A recent example of a coordinated approach to elder abuse is that of the New South Wales Advisory Committee on Abuse of Older People (1994), which developed ways in which a working relationship could be established between all those

agencies with an interest in the abuse of older people or which provide services to them.

As in other areas of fraud prevention and control, solutions to the problem will entail a range of strategies which extend from preventive activities based on the provision of information and education, through informal regulatory measures administered by those who work with older people, to the use of civil and criminal law responses. Each has an important role to play in protecting older persons from economic and financial victimisation.

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Note: Trends and Issues in Crime and Criminal Justice are refereed papers.