

## Action on Elder Abuse

### Briefing Paper – June 2016

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

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#### What are we seeking?

A crime of elder abuse, which would be an aggravated offence covering physical, sexual financial and psychological abuse, and neglect.

We also want certain roles to be legally mandated to report abuse to adult protection teams, and a power of entry when someone is, in effect, imprisoning an older person by refusing access to them.

### [What is an aggravated offence?](#)

An aggravated offence is essentially an enhanced criminal charge, which takes into account specific factors that were involved in the circumstances surrounding the alleged offence. These factors increase the seriousness of the crime. In this case the age and frailty of the victim.

This is not unusual; see the *Crime and Disorder Act 1998* in relation to racially or religiously aggravated crimes.

### [Is elder abuse really a crime?](#)

It is important not to let terminology undermine the seriousness of what happens to older people. Physical abuse is assault, sexual abuse is, for example, a rape and assault, financial abuse is theft and fraud, and psychological abuse is coercive and controlling behaviour. Neglect can be deliberate (a crime) or unintentional, depending upon the circumstances.

### [Don't we already have enough laws?](#)

Current laws fail to take account of the serious impact that abusive crimes have on older people. This is why we have aggravated offences, for situations like racially or religiously motivated hate crime and others, because they recognize that it is not just the crime but the circumstances of the crime that make them especially abhorrent to society.

### [Don't we already have adult protection legislation?](#)

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.

### So, what is the current legal situation?

Very few cases actually reach court, with many either having no action taken or being stopped by the issuing of a police caution. Even when they reach court there are too many instances where serious crimes result in suspended sentences or community service. The current laws and system are not fit for purpose.

### What's wrong with the current Criminal Justice System?

The challenges in the current Criminal Justice System are at least threefold:

- a) failure by the police to give elder abuse cases the priority they warrant, often using police cautions as the cheap and quick way to close them down; failing to formally identify vulnerability or trigger special measures;
- b) a failure by prosecution services to bring forward cases, despite the policy on prosecuting crimes against older people; with no dedicated monitoring to ensure consistent application;
- c) a failure by courts to adequately sentence. While there are some notable exceptions involving prison terms, there are too many instances of community services, suspended sentences and fines.

### What's wrong with giving police cautions?

Elder Abuse is NOT a minor offence and perpetrators should receive a criminal conviction.

Police cautions are usually given to save the expense and logistical difficulty of a full court hearing and happen when someone admits what is usually a relatively minor offence. A caution is not a criminal conviction, but it could be used as evidence of bad character if you go to court for another crime.

You have highlighted 23 cases of poor sentencing, but aren't there others where the sentencing was right?

Yes, of course. There are occasions when a perpetrator of elder abuse actually receives a custodial sentence, but these are relatively few and far between. And, even when they do – such as the case of Lisa Curry who was jailed for six months for assaulting an 82 year old woman (see Dossier of Shame) – the sentence is reduced on appeal to 300 hours community service with two years probation instead.

Shouldn't the length of a sentence be dependent on the full circumstances of the crime?

Of course it should, but for serious crimes – such as the abuse and neglect of frail older people – there is an expectation by society that the minimum sentence is sufficient and acts as a clear deterrent for that perpetrator and others. That is not happening, so we want statutory minimum sentences that a court can extend where it is appropriate to do so.

But the CPS policy in England (for example) already suggests courts should consider greater sentencing for crimes against older people, so why do we need a new law?

Because guidance isn't working and sentencing is too lenient. But also because we need legislation to send a clear message to perpetrators of elder abuse and neglect that their behaviour will not be tolerated and that there will be very serious consequences.

In this Country we operate on the basis that a person is presumed innocent until proven guilty. You are suggesting that some people are guilty until they prove their innocence. This cannot be right?

In fact this is not a novel approach as shifting the burden of proof is seen as acceptable in other spheres, such as aspects of drink driving, and in some circumstances relating to gifts and Wills (under case law).

If someone accepts a position as a care worker, a nurse or a doctor (for example) it is reasonable that society expects them to have sufficient knowledge to act appropriately. It cannot be right that the prosecution

has to prove they acted 'wiffully' if they subsequently neglect or abuse (see the case of Mr Hinnells in our Dossier of Shame)

### [Aren't you just 'stigmatising' older people, making them out to be weak and helpless?](#)

We often hear the argument that criminalising elder abuse would somehow undermine the status of older people in our society. That it would suggest they were powerless, helpless, defenceless.

This is analogous with a woman arguing against domestic abuse laws because they might be interpreted to imply that all women are helpless. Or someone from a minority community arguing that we shouldn't have racial discrimination laws. No one would dare make such an argument, because it so obviously ignores the realities of domestic violence and racial abuse for so many others. So why is it acceptable to argue against laws to protect older people? This is institutional age discrimination at its most basic.

### [No other country has such a crime so why should the UK?](#)

Other countries **DO** have crimes of elder abuse, so the UK is slipping behind. In the USA all fifty States have legislation establishing protective services, although there are variations in definitions of elder abuse and the circumstances that are covered. Mandatory reporting is a consistent requirement. Abuse, neglect and financial abuse are increasingly being recognised as specific crimes in State legislation, with mandatory criminal penalties for different forms of elder abuse. There are also laws in Canada, Japan, South Korea, and Israel.

### [Has it worked?](#)

Paul Greenwood, the British born Deputy District Attorney in San Diego, has been prosecuting elder abuse crimes since 1995. Based on his 20-year experience he argues that having a dedicated law for elder abuse makes a real difference on a number of levels. He says that perpetrators know that if they target an elder [65+] in San Diego – then they will be handled differently. Their punishment may well be more severe. Elders feel that their lives do matter and that the Criminal Justice System does care about them.

## [The Westminster Parliament has already rejected a power of entry, so why are you seeking it again?](#)

First, the advice given by the Association of Chief Police Officers and the Association of Directors of Adult Social Services at the time, which, in summary said that the current laws available were sufficient, was proved wrong several months later by guidance produced by the Social Care Institute of Excellence, (commissioned by the Department of Health).

Secondly, reassurances were given to Parliament that applications would be made by local authorities to the High Court if entry was being refused in these situations, and the evidence indicates this is only rarely happening. Even before the austerity measures few councils ever made use of this approach because of the time and costs involved.

And thirdly, we now have such powers in two out the four nations of the UK and yet the victim/perpetrator circumstances, and the justification for such a law, is the same in each country. As a society, we should aim for the highest level of protection where the laws enacted have proved to be effective.

## [So, who are victims of elder abuse?](#)

Predominantly women over 70 years of age, living at home (sometimes with their abuser).

Victims of elder abuse will often suffer from diminished decision-making capacity due to dementia and other medical and non-medical issues, with most older people who are at greatest risk of abuse and/or neglect, suffering physical impairments and other poor health that place them in a dependent and vulnerable position. Often they are in no position to take action or defend themselves.

## [How many people experience elder abuse in the UK?](#)

In the UK between 500,000 and 800,000 older people are abused in their own homes each year. That does not include the numbers abused and neglected in our hospitals and care homes. For comparison, the NSPCC

estimates 400,000 children face abuse each year, and the RSPCA estimate around 140,000 animals.

The UK Prevalence Study in 2007 found that only 6% of elder abuse respondents reported abuse to the police. AEA estimates that no more than 1:10 elder abuse cases reach adult protection attention.

### [What was the result of the AEA Freedom of Information requests on these matters?](#)

No one recorded or monitored anything of significance in relation to crimes against older people. We were either directed in a circle of organisations, or were told that they were not required to hold the data.

The police do not keep records of recorded crime against older people in a manner that can demonstrate their response to abuse and neglect.

HM Courts and Tribunal Service in England and Wales is unable to provide any information on what is happening to older victims in the court system.

The Ministry of Justice in England and Wales holds no information on how many cases that coroners have addressed where neglect or abuse of an older person has been a factor.

The CPS holds no information in the use of Special Measures for assisting vulnerable witnesses and nor can they indicate the extent (or otherwise) to which they have sought expert evidence in support of abuse/neglect prosecutions.

If data is not held, not monitored or not reported upon, then older people – and their experiences – get hidden and lost in the system.

### [Did you find anything?](#)

Yes. One police force had investigated 76 cases of elder abuse and issued 76 police cautions. Not a single one reached court.

CPS data indicates that the main offence categories that relate to prosecutions are:

Offences against the person (27.4%), Sexual offences (1.9%), Burglary and Robbery (29.4%), Theft and handling (17.1%), and Fraud and forgery (12.3%).

This can be compared with the adult protection data for the same period which shows that referred abuse is:

Physical abuse (26.8%), Sexual abuse (5.3%), Psychological abuse (15.3%), Financial abuse (18.2%), and Neglect (29.6%).

**It is worth noting the disparity between 5.3% of sexual abuse referred to adult protection and 1.9% of sexual offences prosecuted.** While there may be a number of valid reasons why sexual offences are not prosecuted, this is a significant difference that merits investigation.

The Annual CPS Hate Crime Report for 2013/14 tells us that there were 3,317 cases involving older people as victims referred to the CPS by the police, with 79.8% charged and brought to court. This needs to be considered in the context of adult protection referrals, where 63% of victims were older people (65,552 people). Some 43% of referrals were substantiated by investigation, which would suggest that there were over 28,000 older people who were identified as experiencing physical, sexual, psychological, or financial abuse, and neglect i.e. potential crimes. A number of these caused by discriminatory or institutional factors i.e. possible hate crimes. **The obvious question arises as to why there is such a gap between 28,000 substantiated cases of what are crimes in England, but only 3,317 referrals (11.8%) by the police to the CPS (England and Wales)?**