



Sometimes the only things  
visible are tears...

**Action on Elder Abuse**



## Financial Abuse:

“Financial or material abuse, including theft, fraud, exploitation, pressure in connection with wills, property or inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits.”

No Secrets 2000

## Financial Abuse:

(2) "Abuse" includes:

- (a) having money or other property stolen,
- (b) being defrauded,
- (c) being put under pressure in relation to money or other property, and
- (d) having money or other property misused.

Care Act 2014

# Victims



## Who can be victims?

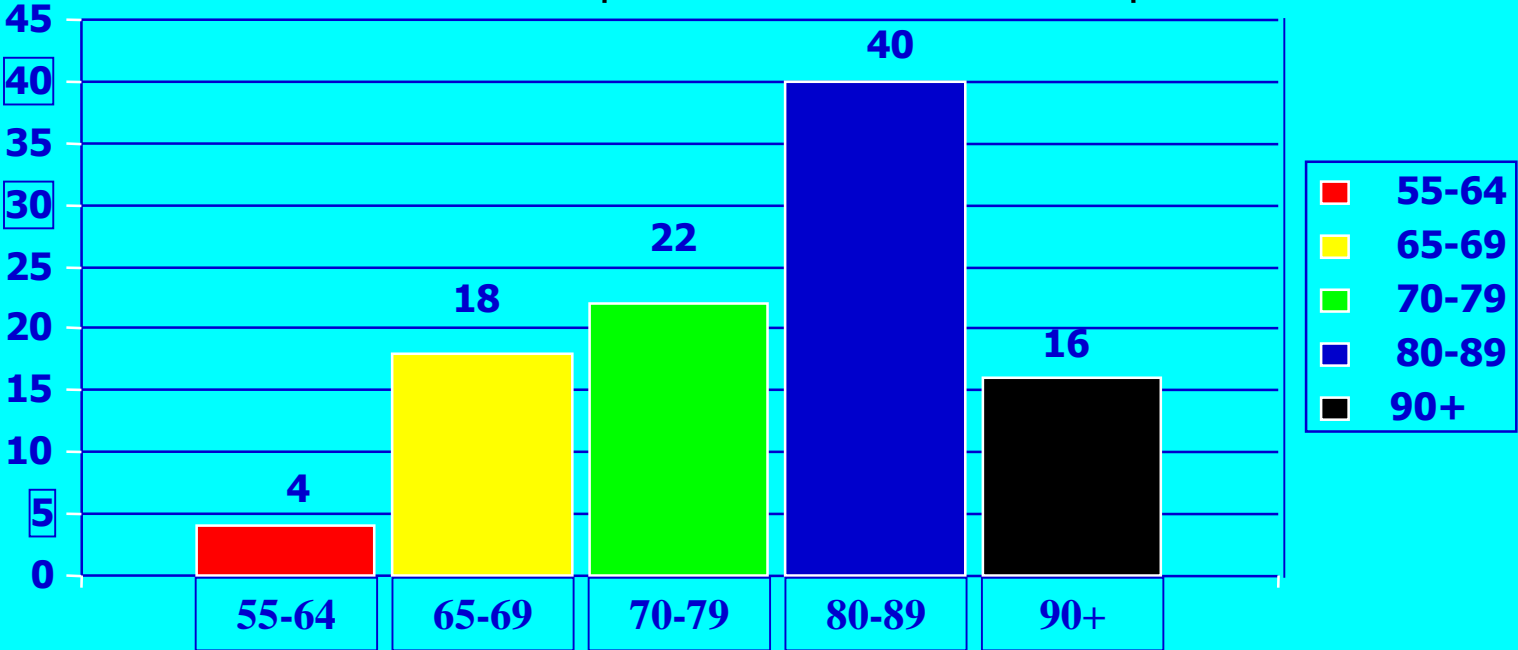
The Office of Fair Trading's report on the Psychology of Scams (2009) implies that there is no single risk factor and, in fact, at one point or another, everyone is vulnerable to a persuasive approach. The OFT proposes that, ultimately, the success or failure of a fraud depends upon an error of judgement on the part of the victim.



Source: Hidden Voices

# Age of victim

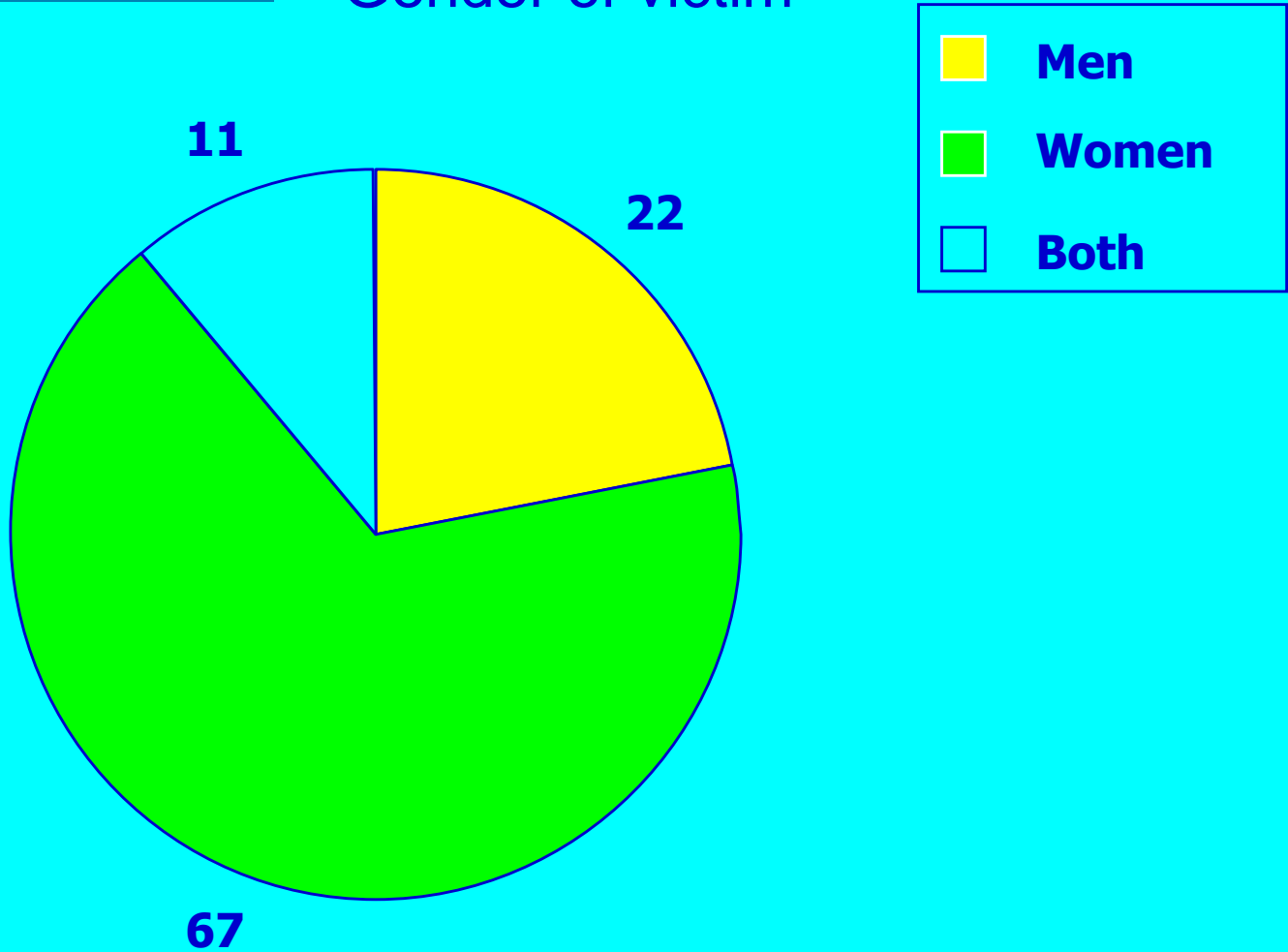
78% of abuse occurs after the age of 70 years





*Source: Hidden Voices*

## Gender of victim



## Who can be victims – risk factors?

Lack of capacity to know what's happening

Dependency on others to manage care or finances

Cognitive impairment impacting on decision making

Low levels of financial capability

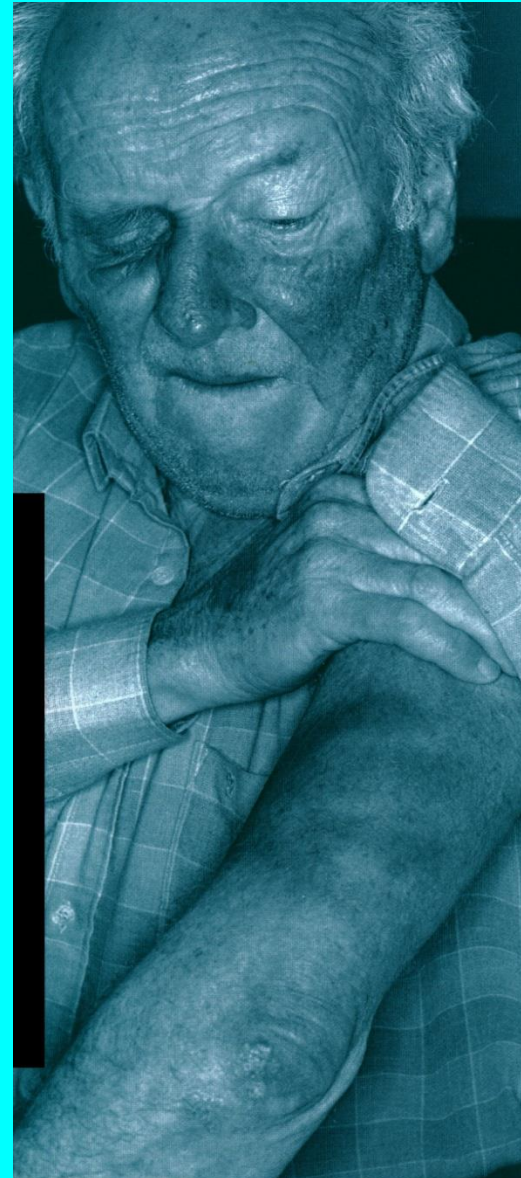
Bereavement/social isolation/ Loneliness

Gullibility/Over trusting

Increased assets/low appreciation



## Perpetrators



## The perpetrators

A distinction can be made between those acting in a position of trust and all other perpetrators, simply because the courts view them differently.

Perpetrators of financial abuse can often be driven by opportunity (position of trust) or by expectation (in a relationship of trust)

## CROWN PROSECUTION SERVICE:

In the Code for Crown Prosecutors, the examples given of common public interest factors in favour of prosecution include the defendant being in a position of authority or trust (5.9e) and the victim of the offence being vulnerable (5.9i).

“Breach of trust implies reliance upon the integrity of a person when providing a service or carrying out a task entrusted to them. Betrayal of trust or abuse of authority in the context of older people could therefore include a wide range of service providers, such as, mini-bus drivers, cleaners, council contractors, carers, tradesmen etc”.

## The perpetrators

Many practitioners report that families may not perceive financial abuse or crime as harmful and think it's acceptable to take money from their vulnerable relative – especially if inheritance of the money is likely anyway.

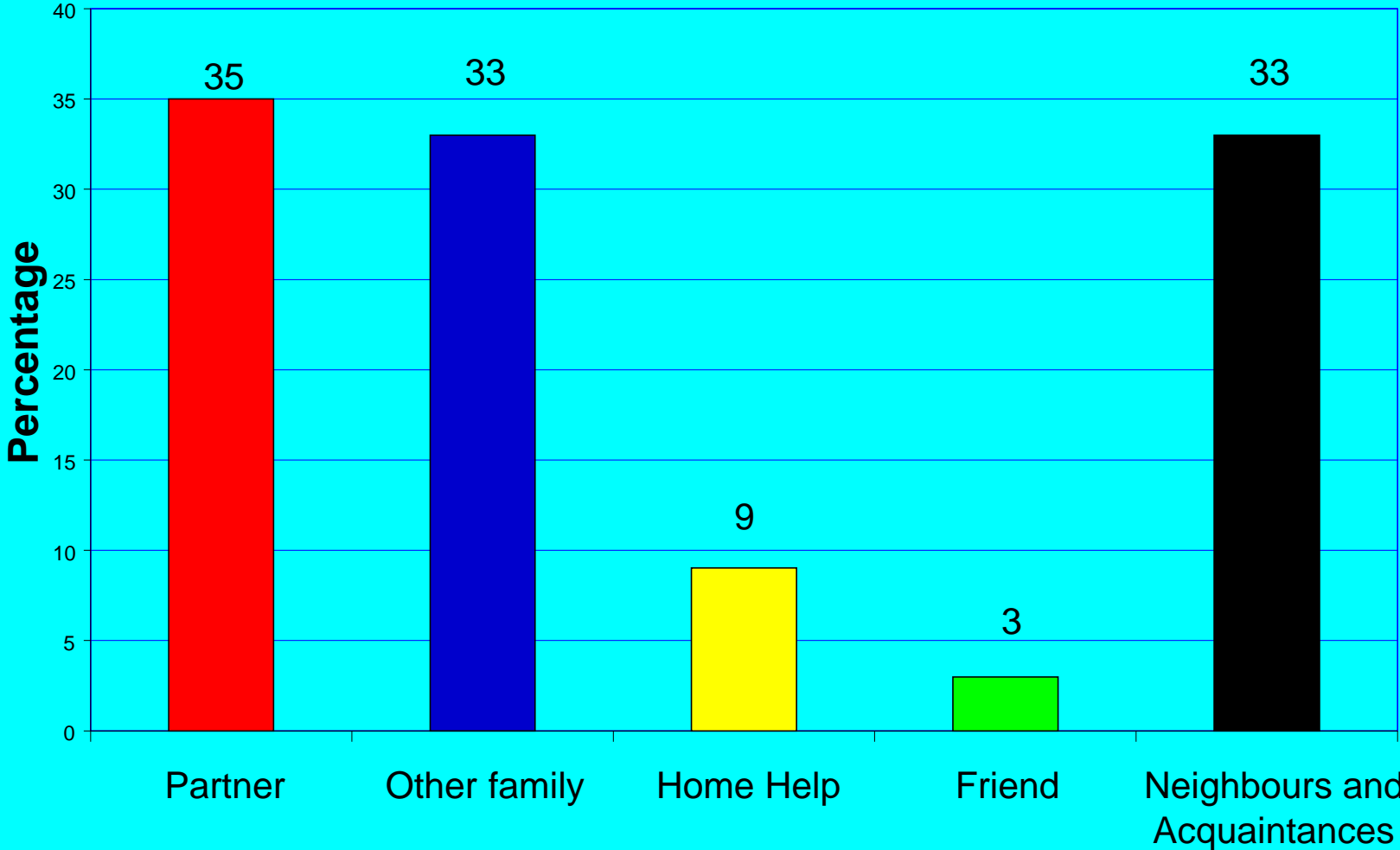
Literature suggests that if perpetrators are heirs, they may feel that they are simply securing assets, to prevent their inheritance being spent on fees for care services.



# UK Study of Abuse and Neglect of Older People - 2007

## The Abusers

Percentage of all respondents who had experienced abuse in the last year

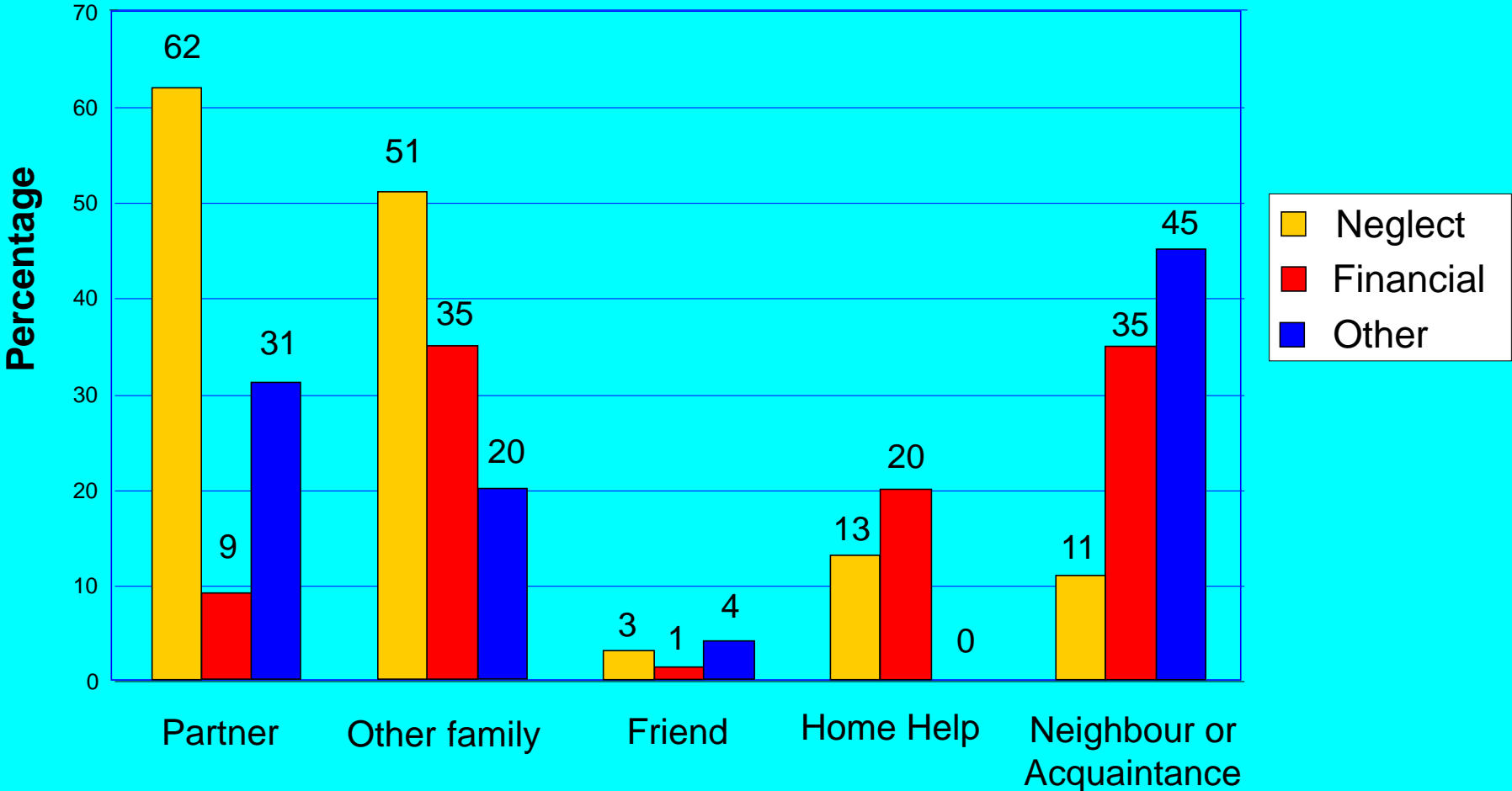




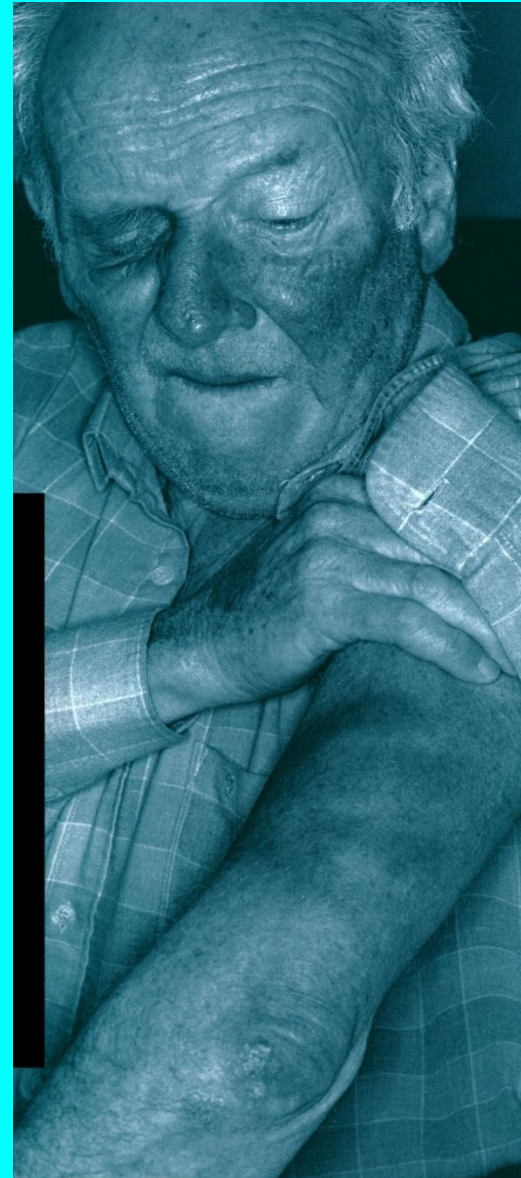
# UK Study of Abuse and Neglect of Older People - 2007

## Abusers and Type

Percentage of those who had been identified as abusers in the last year



# Prevalence



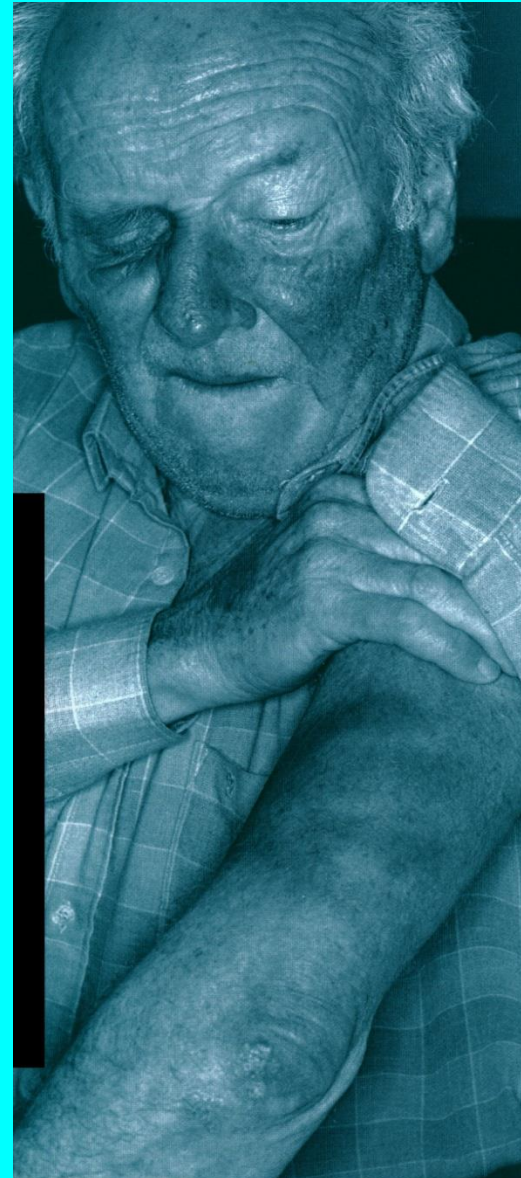
## Prevalence of financial abuse:

The UK Study of the neglect and abuse of older people (2007) found that financial abuse was the second most common type after neglect. It estimated 57,000 people aged 66 years and over experienced financial abuse.

Data from adult safeguarding co-ordinators in England suggest that financial abuse constitutes a significant proportion of all safeguarding referrals, at, on average 25 %. Data from Welsh Authorities put this figure at 21%.



# Offences



## Offences associated with Financial Abuse:

Theft

Fraud ... by abuse of position

Fraud ... by failing to disclose information

Fraud ... by false representation

Blackmail (Coercion, Undue influence)

Forgery

## Offences associated with Financial Abuse:

### Theft

Section 1 of the Theft Act 1968 states that a person is guilty of theft if he or she dishonestly appropriates property belonging to somebody else. The intention must be permanently to deprive the other person of the property.

However, the appropriation will *not* be dishonest if the person believes he or she has a right in law to deprive the other person of it. It is also *not* dishonest if the person believed that the other person would have consented, if the other person knew of both the appropriation and the circumstances.

## Offences associated with Financial Abuse:

### Theft and Mental Capacity

There seems often to be an assumption that if a person makes a gift, and is judged probably to have the mental capacity to make that gift, then it could never be regarded as theft, even if the making of the gift is associated with what appears to be serious exploitation.

However, the legal case law does not support such a blanket approach. This is because there have been major theft cases in the courts, which concluded that in some circumstances it is open to a jury to find theft.

## Theft and Mental Capacity

A 99-year old woman lived in a care home. Her affairs came under the control of the two care home owners. They drew cheques on her account and obtained a power of attorney and turned her assets in to cash paid into an account jointly held with the woman. They argued that the woman had made them gifts, and that **because she had capacity and had agreed, it could not be theft.** The court held that “dishonest appropriation” in the Theft Act 1968 did not necessarily mean “without consent”.

*R v Kendrick* [1997] 2 Cr App 524.

## **Inherent jurisdiction and capacity:**

(The Court's) inherent jurisdiction can be invoked wherever a vulnerable adult is, or is reasonably believed to be, for some reason deprived of the capacity to make a relevant decision , or disabled from making a free choice, or incapacitated or disabled from giving or expressing real and genuine consent ... because of mental disorder or mental illness ... **or other things such as constraint, coercion, undue influence, or other vitiating factors.**

It is of course of the essence of humanity that adults are entitled to be eccentric, orthodox, obstinate, or irrational. Many are.

## Concept of undue influence

Apart from criminal law, there are also civil legal remedies relevant to finance and property harm suffered by vulnerable people. One of these involves a concept known as “undue influence”. It applies to gifts and wills. This is where a person has mental capacity to conduct the transaction – the will or the gift – but has had their will overborne not just by the influence, but by the undue influence, of somebody else.

### The perpetrators

A daughter persuaded her mother – with early onset Alzheimer’s Disease – to change her will. The revised will was in favour of the daughter, whereas previously grandchildren had benefited. Her argument was one of natural inheritance. The judge held that there was nothing wrong with this; the daughter had exercised influence which was quite legitimate, not undue influence – and there had been no evidence of badgering or pestering of the mother.

*Scammell v Scammell* [2008] EWHC 1100 (Ch).



## Civil remedies: undue influence

When there is evidence of coercion or undue pressure, this is called “express” undue influence. However, often there is no such evidence; but instead, there might have been “presumed” undue influence. This applies to gifts only.

It typically must involve a relationship of trust and confidence, which is unequal; a transaction which, **if not suspicious, must at the least need explaining.** And, without this, the courts can set aside the transaction as invalid – even if there is no direct evidence that this person has done anything “wrong”.

## **Civil remedies: undue influence**

A 72-year old man lived alone, with limited mobility. He met a neighbour when he was in distress and she “took him under her wing”. She offered to provide two meals a day, and social services suggested he sign a third party mandate giving her access to his bank account. Over time, he gave her nearly £300,000. This was 18 months after they had met.

The court found undue influence, regardless of her conduct. It had to be established affirmatively that the relationship of trust and confidence had not been betrayed or abused.

## Civil remedies: proprietary estoppel

A further legal, equitable principle exists, called “proprietary estoppel”. This might provide an innocent explanation of what might otherwise look like a suspicious transaction.

The key principle involved is that a person (for instance, a carer) has acted to his or her own detriment by providing services to a second person, on the basis of – and relying on – assurances made by that second person.

## **Civil remedies: proprietary estoppel**

It started with the gardening service for an elderly woman provided by a self employed brick layer. She became more incapacitated so he started to help her, collect prescriptions, help her dress, get to the toilet, provide food – and still do the garden. For the last ten years he did this without pay. In response, she told him not to worry, 'this will all be yours one day'. She died without having made a will. The case went to court, which held that he had equitable interest of £200,000 out of the house and furniture valued at £435,000. This was on the basis of proprietary estoppel.

## **Crime situations:**

A care home manager took over £100,000 from severely disabled, sick and dying residents. In a position of trust, she had access to residents' bank accounts, cash cards and personal identification numbers (PINs). Through false accounting she used the home's cheque book, ostensibly to pay for work carried out for the home, but actually to buy things for herself. She withdrew amounts from residents' account unrelated to their expenditure. Through obtaining property by deception she used the home's bank card to obtain things for herself.



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## Conman Michael Mawdsley jailed for eight years after £1.3m life savings fraud

May 11 2010 by Luke Traynor, Liverpool Echo

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A FINANCIAL adviser was jailed for eight years for stealing the hard-earned savings of pensioners across Merseyside in a "despicable" £1.3m con.

Michael Mawdsley tricked his vulnerable victims into believing they were making good investments

of their precious cash.

But the fraudster, now 61, was in reality earning huge amounts of commission for himself, or the investments were ill-advised or based on lies.

Dad-of-one Mawdsley, described by a judge as a "Nigel Havers-style charmer", is a convicted fraudster. He was jailed for eight years in 2010 for stealing £1.3m from his victims.

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## Trusting spinsters lost £1million to 'boiler room' fraudsters

By RUPERT STEINER

Last updated at 2:50 AM on 12th December 2009

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A conman who stole the £1million fortune of two elderly sisters has been jailed for seven years.

The two spinsters, aged 83 and 81, lost everything after Peter Fretwell persuaded them to sell the shares they held and invest in companies he recommended.

Fretwell, 44, specifically targeted older people in a 'boiler room' scam - so called because its staff operate from a cheap room like a basement housing a boiler.

The sisters were named in Isleworth Crown Court as Edith and Doris Sullivan.

Police said their real identities were being kept confidential to protect them.

They had inherited shares in some of Britain's biggest firms, including Imperial Tobacco and GlaxoSmithKline, from their doctor father.

The dividends let them live comfortably even while they did secretarial and gardening work.

But in 2006 they were cold-called by a fraudster



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Scam mail  
delivered to a  
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The Postman  
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**Elder Abuse Helpline**

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**Admin telephone:**

**020 8835 9280**

**WEBSITE: [WWW.ELDERABUSE.ORG.UK](http://WWW.ELDERABUSE.ORG.UK)**