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Exploring the extent of which Financial Abuse of Elderly Victims is carried out by Power of Attorneys

**A dissertation submitted for the Master of Criminal Justice and
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Declaration

DECLARATION

This work has not previously been accepted in substance for any degree and is not being concurrently submitted in candidature for any degree.

Signed (candidate)

Date 10th March 2021

STATEMENT 1

This thesis is the result of my own investigations, except where otherwise stated. Where correction services have been used the extent and nature of the correction is clearly marked in a footnote(s). Other sources are acknowledged by footnotes giving explicit references. A bibliography is appended.

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Date 10th March 2021

STATEMENT 2

I hereby give consent for my thesis, if accepted, to be available for deposit in the University's digital repository.

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Date 10th March 2021

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Abstract

Advances in medicine and technology has resulted in people living and working longer and has added to an ever-growing population. That being said, the elderly generation are becoming more reliant on family members, care workers and legal representatives as they age to help with their affairs such as financial matters. As a result, cases of elder abuse are becoming more frequent and has addressed increased pressures on the social care sector and public services to ensure the elderly population are protected as far as possible. Research has shown that more elderly people are entering into legal relations such as enforcing a Power of Attorney, at a time where they have the capacity to make such a decision, as a precaution to assist them with financial matters for a time where their capacity may become diminished. The complexities in legal documentation such as Power of Attorneys has exposed many elderly people to abuse, at the expense of a family member or friend, who at one time they trusted enough to give legal authority.

The purpose of this research was to gather academic evidence from literature from past academics on elder abuse, to explore public perception on abuse and whether there is enough awareness of the rate of which abuse occurs and to evaluate whether financial abuse is more or less likely to happen if someone has a legal representative. To assist with research, academic analysis has contributed to theory surrounding abuse, how it has emerged and preventative means for future populations. Whereas primary data collected from the general public, through the use of questionnaires and interviews has assessed whether there is enough awareness on abuse and whether people fully appreciate the impacts financial abuse of the elderly and the pressures it places on public sector agencies.

Ultimately, the overall aim from both primary and secondary data collection has allowed evaluations and conclusions to be made as to whether appointing a legal representative is still appropriate and whether the development of technology has increased the risk of financial abuse occurring.

In-depth research and evaluation of such primary data has concluded that the public generally believe financial abuse is more likely to occur in cases where a Power of Attorney is present, whereas secondary data from literature fails to explore the existence of a Power of Attorney and the wider impacts this has on the safety and protection of the elderly population.

Contents

Declaration.....	1
Acknowledgements.....	2
Abstract.....	3
Chapter 1 - Introduction	5
1.1 Background – What is elder abuse?.....	6
1.2 - Establishing Capacity:	7
1.3 - Research Purpose:	9
Chapter 2 - Literature Review	10
2.1 - Emerging issues with Power of Attorneys:	11
2.2 - Application of Power of Attorneys:	12
2.3 - The Question of Capacity:.....	14
2.4 - Reform and Prosecution of a Power of Attorney:	16
2.5 - Criminal Justice Response:.....	18
2.6 - Conclusion:.....	20
Chapter 3 - Methodology.....	22
3.1 - Ethical Consideration	24
3.2 - Research Methods	24
3.3 - Research design	25
3.4 - Sampling:	26
3.5 - Methods Used for data collection:	27
3.6 - Analysis of methods.....	27
Chapter 4 - Data Analysis	30
Chapter 5 – Discussion.....	39
5.1 - Conclusions and recommendations.....	42
References	44

Chapter 1 - Introduction

Abuse manifests itself in various forms such as physical, emotional, and financial and typically exposes protected characteristics such as age, gender, and disabilities to name but a few. Individuals can possess vulnerabilities that appear to make them more susceptible to abuse, and accounts for increased pressure on the public sector and criminal justice system to adequately protect them within society. Although the impacts of all forms of abuse regardless of age, have a detrimental impact on the victim as well as society, elder abuse appears to be the least discussed, perhaps for moral reasons and is often overlooked, particularly in care settings (Malmedal et al, 2020) and is widely considered a 'private matter' (Luoma, 2016). The elderly generation (those typically 65 years or older) account for a large proportion of the population and rely heavily upon social services and family members as they age, yet elderly abuse appears to be a growing threat worldwide.

Typically, elderly people lean on relatives from the younger generation due to familiarity, and changes in domestic arrangements such as divorce or through the loss of a spouse may encourage dependence on relatives (Gibson and Honn 2012). However, Gassoumis et al (2020) argue that family are often the main perpetrators of abuse and as a result pose a greater risk to the elderly population. Lachs and Pillemer (2004) reviewed elder abuse to be most frequent with pressures in living conditions, particularly focussing on those who are socially isolated, have a dependence on younger family members or carers and those with an illness of the brain including dementia and Alzheimer's, limiting their decision-making capabilities.

1.1 Background – What is elder abuse?

The World Health Organisation (WHO, 2018) outlines elder abuse to be either a 'single or repeated act' directly or indirectly, resulting in harm or distress to an older person. While physical and emotional abuse appear to be at the forefront of elder abuse, financial abuse has become an increasingly concerning aspect of elder abuse, with little preventative means. Wolf (2003) as cited by Bonnie and Wallace (2003) discusses elder abuse to have emerged following child abuse and domestic violence cases in the 1960's and 1970's and highlighted the elderly population to be as equally vulnerable within society. Similar to child abuse due to the vulnerabilities that the individual possesses (Black, 2008), elder abuse and its criminalisation has only recently been recognised within the criminal justice system, yet prosecution of elderly abusers remains surprisingly low (Counihan et al, 2013). The WHO (2020) identify that 1 in 6 elderly people experience abuse, a rate which is only expected to increase with aging populations, with people living and working longer. Coupled with aging populations, advances in technology are also believed to play a big part in the increase of financial abuse cases, with many elderly people falling victim to online scams at the expense of fraudsters and the reliance on the digital world to complete basic tasks. Bonnie and Wallace (2003) discuss an increase in fraudulent activity and misappropriation of funds to be most common in cases where abuse has been identified and are often exposed where individuals based on their age have lost capacity or where their capacity is somewhat diminished.

Identified from research, The Older People's Commissioner for Wales (2016) highlights the existing issues associated with elder abuse in Wales and has produced publications on how they are addressing the current rates of abuse in Wales specifically. Their function is to identify elder abuse, working closely with the crown prosecution service to ensure the 'abusers' are held to account. According to the Older People Commissioner for Wales, 'crimes committed against older people are under-reported', with the most common being physical, emotional, or financial abuse. Worryingly, there are very few reports made by elderly people themselves, which could suggest that elderly people are not presenting themselves to the criminal justice system and other authorities at a time of need or are in a hostile environment meaning they cannot speak out due to the threat of further abuse.

There is also the issue that many may feel responsible for the abuse as they appointed a 'trusted' person and may not always hold them responsible.

One of the key publications produced in the last few years by The Older People Commissioner for Wales, identifies understanding motives for abuse, with many cases arising for monetary gain. This relates closely to Black's 2008 publication, the 'Not So Golden Years', where references were made to the legislative system in the UK being primarily responsible for failing to adequately protect societies most vulnerable. Black (2008:290) states that around "70% of the nation's wealth" is made up of those aged 65 and over, making them "tempting targets" in respect of financial abuse. With many 'elderly' people retiring from employment when they reach state pension age (65 years), the 'golden years' is presumed to relate to a time where individuals can live comfortably, with little money worries. However, it has already been identified, that this is not always the case, and a large proportion of the elderly population experience abuse in one form or another by a 'trusted' person who holds power of attorney. According to Taggart (2020), 'many fall between the cracks' in a power of attorney's coverage, leading on to the purpose of further research to be required to adequately protect societies most vulnerable and to increase exposure to the types of abuse that is carried out by those with legal authority.

1.2 - Establishing Capacity:

Establishing capacity is one of the most complex issues associated with the elderly population, and often diseases of the mind such as Alzheimer's and dementia present themselves late in a person's life, forcing reliance upon others such as relatives to manage matters such as finances. Fleming (2016) explores the diminishing state of mind of elderly people and the risks associated if care is limited and highlights as a last resort the 'daily functioning' of an elderly person mind is affected by diseases such as dementia. Lhermite et al (2019) identify 'family obligations' and arrangements to be sometimes necessary in ensuring elderly people and their assets are adequately protected and suggest that legal relations such as Power of Attorneys or deputyships are enforced to assist with this. Past academic research however has highlighted that those closest to elderly people such as family members are more likely to be 'perpetrators of abuse' (Malmedal et al 2020) and domestic settings are typically regarded as an environment where abuse can occur,

undetected. Cockburn et al (2018) informs the risk of abuse to relate specifically to enduring power of attorneys predominantly family members, who 'improperly seek early access to assets (Setterlund et al, 1999), at the expense of elderly relatives. However, the misuse of power is usually hard to determine due to family complexities and often the elderly individual is unaware that their property or affairs are being mismanaged. According to Lonbay (2018), elderly people are 'highly represented' within the social care sector, however many safeguarding referrals are made to ensure the welfare and security of individuals, meaning there are many cases of individuals who suffer some sort of abuse at the expense of family members, carers, or those with legal authority over their financial affairs.

When a person no longer wishes to act on their own behalf, or become too frail, elderly, or incapable, typically legal arrangements are made, relinquishing their ability to act for themselves, and appointing someone to take over the management of affairs in the form of a Power of Attorney. A Power of Attorney allows for individuals to appoint someone to manage their affairs and permits for future plans to be made when that person becomes incapable (Hook and Thomas, 2013). However, where a person's mental capacity is questionable, deputyships or guardianships are often granted to a respective person to carry out a legal duty in firstly ensuring the person is cared for adequately, and secondly for administering and looking after their financial affairs. Both arrangements are legally enforced, with the assumption that the appointed person will act in the individuals 'best interest'. Unfortunately, world-wide, this is not always the case and a large proportion of elderly people experience abuse in one form or another by their appointed person. The registration of such legal document is paramount to its application, and the capacity of the elderly person must be satisfied before they can agree to a Power of Attorney. Capacity is determined in a clinical setting to ensure the individual is of sound mind, has decision making ability, appreciates the significance of such arrangement (Lhermite et al, 2019) and is aware of the potential risks that could occur under an abuse of power.

The purpose of this research aims to consider and explore as far as practically possible, the following aims and objectives:

- To consider the current threat of elderly abuse, exploring what abuse is and the types of abuse that occur.
- To focus on financial abuse in particular, and the impact this has on the elderly population and the criminal justice system.
- To explore legal relationships such as power of attorneys and consider whether they are always appropriate in respect of elderly people's affairs.
- To conduct research to gather individual responses to financial abuse and the vulnerabilities of elderly people and compare to previous academic research.
- To conclude on research gathered and make recommendations for future safeguarding processes to protect the elderly population.

1.3 - Research Purpose:

To date, little research is current or readily available in the UK specifically, on the extent to which elder abuse occurs resulting in the desire to complete additional, recent data collection. The aim is to explore the wider populations knowledge and understanding of the tell-tale signs of abuse as the assumption is that many have little awareness unless they are directly exposed to it.

The aim of this research is to gather perspective, knowledge and explore the wider issues associated with the abuse of elderly people and the effects this has on society as a whole. It will be identified as to how relevant elder abuse is within the criminal justice system and what developments are required to ensure elderly people are protected as far as possible. Research through primary and secondary sources will mainly focus on the financial element of abuse with emphasis on legal arrangements, exploring how individuals suffer from the misuse of power granted by the courts in the UK and will finally conclude on preventative means and safeguarding provisions to adequately protect the elderly population.

Chapter 2 - Literature Review

Ageing populations worldwide present a variety of economic benefits, generally with people living and working longer with fewer health complaints (Christensen et al, 2009). That being said, there is also the risk of increased pressures collectively on society, with more people relying on public sector and associated agencies for support as they age. Typically, governments respond to ageing populations by increasing retirement ages, encouraging people to lead a healthier, active life. However, the risk of developing health complaints at a later age is still very much a concern for medical professions and many academics would argue that individuals are encouraged earlier to make provisions for their later years in the event of health conditions developing quite rapidly.

One of the biggest concerns for the elderly population at present is the risk of developing diseases of the mind such as dementia or Alzheimer's, limiting a person's ability to adequately care for or protect themselves. McCawley et al (2014) indicate that people are encouraged prematurely to form legal relations in the form of a power of attorney as a precaution if they become mentally incapable later on in life, granting another person 'normal' powers to manage their financial affairs (Tiernan, 2005).

While power of attorneys can provide benefits to those who 'anticipate losing cognitive ability' (Harding and Peel, 2019), by giving them the security of appointing a trusted person to manage their affairs, the execution of such arrangement raises concerns with many academics. The emerging issue of financial abuse specifically is an issue to be discussed, focusing on elderly people's rights before and after losing capacity and whether or not a power of attorney is a free pass to access elderly people's funds and assets. As a means of reviewing literature already published, the following areas will be discussed and evaluated in further detail:

- The emerging issues with implementation of Power of Attorneys
- The Application of Power of Attorneys and the aspects they intend to cover
- The rights granted under a Power of Attorney, specifically focussing on elderly people
- Concluding on the criminal justice response to dealing with allegations of elder abuse

2.1 - Emerging issues with Power of Attorneys:

Previous academic research has suggested that legal relations such as power of attorneys often expose elderly people to financial abuse, due to the complexities associated with legal terminology. McCawley et al (2014) and Tiernan (2005) highlight many 'misinterpreting' the power granted to them in such documents, and see abuse rising due to them misunderstanding what is required of them when acting. A key concern for academics is the accessibility and affordability of appointing a power of attorney, and whether the elderly person granting has fully considered the implications of doing so. Jackson et al (2016) explain how power of attorneys tend to be cheaper to implement than guardianships, making the ease of obtaining such authority much quicker with less formalities involved. Particularly in family relationships, it is difficult to determine whether the appointed person will maintain acting in the best interests of the individual as health concerns develop, or whether any pressures associated with care needs increasing, shadow their judgments and ability to maintain acting within the desired parameters under the Office of the Public Guardians guidance. Countries such as Australia, Canada and the United States of America have many examples of literature which have explored and highlighted the existing problems with power of attorneys. Publications have further defined the legal process of appointing a Power of Attorney, to limit the risk of financial exploitation by someone with authority over an elderly person's affairs. In America specifically, there is now a requirement for an attorney to be unrelated to the donor (in this case an elderly person) and to act impartially (Tiernan, 2005), as a means of protecting the donor from abuse caused by a relative.

Unfortunately, the process of granting a Power of Attorney in the UK is less stringent and the Office of the Public Guardian appoint individuals believed to be trusted by the donor but have been known to fail to monitor the application of duty to ensure the person is acting as they should (Matthews, 2004). The Office of the Public Guardian are however required to investigate any allegations of abuse reported to them, where allegations arise over a person not acting in the donor's best interests. That being said, forming a legal arrangement is not thought to increase the risk of being financially abused, however it does raise doubts about whether encouraging someone to enter into a legal arrangement is always appropriate, considering the

extent to which financial abuse occurs. One difficulty highlighted in past research by Griffith et al (2019) was that people do not tend to question the actions of a Power of Attorney as it assumed that would always act in the best interests of the donor, making it hard to determine the exact scale of financial abuse carried out by them (Baker et al, 2016). Financial abuse amongst the elderly is believed to be the most underreported form of abuse that the elderly population experience and although past research has identified and acknowledged that abuse occurs, there is little in the means of preventative measures or reforms in law to ensure they are adequately protected.

Fundamentally, it is to be determined who is specifically responsible for the rate of elderly abuse in the UK and whether it is specific to the Power of Attorney themselves, or whether the appointing body (Office of the Public Guardian) are in part responsible. The concerning factor is that Laches and Pillemer (2004) identify that between 2% and 10% of elderly people are subjected to abuse in one form or another but elder abuse has only recently become criminalised (Payne, 2008), meaning there are potentially thousands of cases previously that have avoided prosecution. It could be argued that the Office of the Public Guardian (OPG) have a duty to carry out thorough checks on the prospective attorney before appointing, to ensure they are fit for duty, and that the elderly person is fully aware of the risks associated with appointing someone to manage their affairs, as well as the criminal justice system for its provisions (or lack of) in ensuring societies most vulnerable are adequately protected against financial abuse.

2.2 - Application of Power of Attorneys:

Like any legally enforceable document, a power of attorney is intended to be carefully drafted, ensuring that the welfare and finances of individuals, specifically elderly people in this case are adequately cared for when they become incapacitated. Matthews (2004) discusses that for a power of attorney to be created, the individual or granter must be 'competent' or of sound mind and ensure they understand the rights they are giving to another person. The application of a power of attorney in the UK can take two forms, an Enduring Power of Attorney, or a Lasting Power of Attorney. Although the end result is the same, the execution differs slightly in regard to the registration process with the governing body. An Enduring

Power of Attorney does not require formal registration before it can be used in formal matters but is required to be registered with the Office of the Public Guardian when the donor displays behaviours that indicate they are beginning to lose capacity (Office of the Public Guardian, 2020a). Whereas a Lasting Power of Attorney must be registered before it can be used as a legally enforceable document and the question of capacity must be satisfied before it can be applied (Office of the Public Guardian, 2020b). Both documents when registered take away any normal rights from the donor and it is therefore the responsibility of the appointed attorney to manage any financial or health matters, depending on what has been included in the document. It could be argued that although a Power of Attorney has the intention of protecting a person's finances and welfare, while the person remains of sound mind, their rights legally are somewhat limited if the Power of Attorney has been enforced with government agencies and banks alike.

McCawley et al (2014) discusses abuse to occur most commonly under enduring power of attorneys due to their 'simplicity, flexibility and ease of execution'. Although no formal registration is required before it can be used, it must be drafted or seen by a solicitor to be legally binding, to ensure the scope of authority has been considered as far as possible. An Enduring Power of Attorney raises many questions about its application, with the wording of such documents being vague and not specific enough in regard to what powers the appointed person should have. In some instances, due to vague wording of documents, not all affairs or in some cases, all financial affairs are covered by the attorney, and it is not always what the donor anticipated, specifically in regard to selling residential properties of the individuals. Therefore, it is considered detrimental to the individual granting the Power of Attorney, that their intended wishes are carefully documented in the document, regardless of how trusted the attorney may be. Abuse is believed to arise due to the 'general powers' granted under an Enduring Power of Attorney make it difficult to determine if abuse has occurred and the document itself appears to offer very little protection to those granting the power of attorney due to its minimalist wording.

Due to the vague wording in an Enduring Power of Attorney, it is also argued that they expose the aspect of 'self-dealing' which tends to occur (Tiernan, 2005), whereby a relative who is appointed would subject the donor to financial abuse or withhold funds from them as a means of 'protecting their inheritance', making

provisions for their future rather than the relative whom they act for (Cockburn et al, 2018). Age UK (2020) suggest that deprivation of capital often occurs whereby individuals dispose of money or property to avoid paying care home fees, so that their inheritance is not used up to pay for the elderly persons care home fees. This raises the issue of a misuse of power if a Power of Attorney has intentionally disposed of funds from the individual meaning their level of contribution to care is not accurate, to financially benefit themselves at a later stage, it could be argued that they are not acting in the donor's best interest to gain themselves from the arrangement.

2.3 - The Question of Capacity:

Although Power of Attorneys are normally formed as a precaution for future planning, the question of capacity is key to determining whether it has been formed correctly. For a valid Power of Attorney to be formed, the person granting the power to another must have the mental capacity to enter into such legal arrangement. However, as an Enduring Power of Attorney requires no formal capacity assessment to be carried out before a document can be produced (Gregory et al, 2007), it is difficult to determine if all documents have been formed under the correct guidelines.

The complexity in drafting such document places increased pressures on solicitors forming the document as they have to consider whether a capacity assessment is required prior to granting, with no medical knowledge (McCawley, 2014). If it is clear that the elderly person has already or is beginning to lose capacity, they are obliged to request an assessment of capacity, to ensure arrangements are created legally. If any doubts were to arise over the individual's capacity at a later stage, the appointing solicitor may be liable to prove that they considered the persons capacity at the time of signing the document, to ensure it was created legally (Chiu et al, 2017). As many concerns were gathered in respect of 'illegal' forming of enduring Power of Attorney's, further amendments were made legislation to protect the individual granting the power. Since 2007, it has not been possible to grant an enduring Power of Attorney, however it is still possible to register an existing one if that person has now lost capacity (Office of the Public Guardian, 2020a).

The most widely used power of attorney in the UK in the modern context is the Lasting Power of Attorney, which gives specific powers to the attorney in regard to

what is to be managed and requires formal registration before application, meaning the Office of the Public Guardian are aware of such document. Unlike an Enduring Power of Attorney, a Lasting Power of Attorney can cover property and finances, as well as health and welfare. To ensure a Lasting Power of Attorney is fit for purpose, there are a number of criteria to be satisfied before applying under the Mental Capacity Act 2005. The Mental Capacity Act was intended to 'clarify and extend the law' that protects and governs those believed to develop some form of incapacity at a later stage (Samanta, 2019) and refined certain aspects of the general rules of applying for a Power of Attorney. Firstly, the donor must sign and acknowledge that they understand the powers they are granting, and specific powers should be granted and signed appropriately (Curtice et al, 2012). One of the main reforms to come from a shift in legislation in respect of Power of Attorney's was the need for more witnesses to validate the document and also joint and several attorneys or replacement attorneys. Curtice et al (2012) indicate provisions under the Mental Capacity Act 2005 where made to ensure individuals are protected by the document as far as possible. By introducing the need for Lasting Power of Attorney's to be witnessed by independent parties and replacement attorneys or people informed of decisions to be listed, was intended to avoid any mismanagement of affairs, so that those witnessing the document can address any errors or vagueness in the perimeters of the document, as a means of ensuring the donor is protected legally.

Although the most commonly used Power of Attorney in the modern context, in its early stages, between January 2009 and December 2009, 300 cases of Lasting Power of Attorney's were brought to the attention of the court of protection, with objections from interested parties about the management of affairs granted (Ministry of Justice, 2010 as cited by Curtice et al, 2012). It is believed that of the 300 cases, the majority had not been witnessed and signed appropriately and were therefore invalid, meaning the Lasting Power of Attorney could not act as first intended. After thorough investigation, minor amendments were made, ensuring any future Power of Attorney's made were done so with further care and attention, ensuring all sections were completed accurately and witnessed accordingly. While Curtice et al (2012) discuss criteria required to make a legally binding Power of Attorney, Lyons (2012) criticises the application of such a document, suggesting the confusion as they do not uniformly apply to all of the UK. In Scotland, the question of capacity is

somewhat different to England and Wales, and different acts and statute make it hard to determine if a person's capacity should be assessed prior to making the Power of Attorney. It is difficult therefore to establish if the document itself has been formed correctly, and which act should be relied upon if any doubts are raised about its application. The Mental Capacity Act (2005) is specific to granting Power of Attorney's in England and Wales and provides framework and criteria required to assessing a person's capacity, whereas in Scotland, The Adults with Incapacity Act (2000) is relied upon to create the Power of Attorney. Depending on where in the country the abuse occurs, depends on which statute has been used to form the legal arrangement.

2.4 - Reform and Prosecution of a Power of Attorney:

The need for consent and capacity is crucial to ensuring future decisions in regard to finances are adequately defined and gives individuals the opportunity to 'interpret their wishes' to a person whom they trust (Griffith et al, 2019). The execution of power of attorneys in the UK has reformed over recent years, with emerging concerns growing over the question of capacity and the rights of individuals when they are no longer able to make decisions for themselves. Taggart (2020) identified the vulnerabilities of elderly people specifically and how the Mental Capacity Act 2005 aimed to further protect the rights of individuals who may be losing or have already lost capacity.

The Mental Capacity Act 2005 saw framework implemented which along with protecting the rights of elderly people when forming a lasting power of attorney, gave provision and protection to carers and those authorised to act on another person's behalf (Taggart, 2020). Arguably one of the biggest reforms to come from the Mental Capacity Act was the means of prosecution of abuse, making it somewhat easier to hold someone legally responsible. Identified in the case of *R v Kurtz* (2018), S.44(1)(b) of the Mental Capacity Act saw definition of criminal charges specifically relating to 'mistreatment' or 'neglect' when appointed as a Lasting Power of Attorney. The case saw a parent-child arrangement, with the mother Cecily Kurtz having a long history of mental health illness. Her daughter was legally appointed under an enduring power of attorney but following the introduction of the lasting power of attorney, no efforts were made to register the Enduring Power of Attorney, nor any

efforts made to revoke and apply for a Lasting Power of Attorney as her health condition deteriorated. Kurtz was found dead in her residential property in 2014, in an unkempt way. It is believed she had been in the same position for several months and was severally malnourished. In which time, her daughter had not sought medical advice and still had access to benefits and pensions for Mrs Kurtz. A lengthy court case saw the question of capacity highlighted and whether Kurtz's daughter could be prosecuted under S.44 of the act due to no capacity assessment ever being carried out or due to the fact that the act is specific to Lasting Power of Attorney's. Due to Kurtz long history of illness, the court concluded that there was no requirement to establish her capacity, and the fact that the Enduring Power of Attorney had not been registered was a failing on the daughter's part as it was clear that Kurtz was not able to care for herself or make decisions including financial matters herself. Criticism arose and the Court of Appeal reviewed the decision of prosecution under S.44 of the act as it could not be determined without a recent capacity assessment to determine whether Kurtz was able to manage her affairs efficiently. Despite identifying flaws in current legislation at the time, the Mental Capacity Act was criticised by many including Baroness Hale (as cited by Taggart, 2020) as being 'impenetrable', and limited in its application, meaning the most vulnerable of individuals were still exposed to abuse and misappropriation by those with authority over their affairs. The question of capacity should be determined on both time specific and decision specific and cannot be uniformly applied in every case of capacity. The case of R v Kurtz (2018) highlighted the need to determine the difference between S.44(1)(a) as wilfully neglecting someone who they believe lacks capacity and S.44(1)(b) taking into account S.44(1)(a) as well as specifically applying if they are appointed under an LPA. In the Case of R v Kurtz (2018), the Enduring Power of Attorney was prosecuted and imprisoned for failing in her duty of adequately protecting someone for whom they care for, and for someone they legally represent. The case set a precedent to highlight reform carried out to ensure vulnerable individuals who have Power of Attorney's are still entitled to normal rights under criminal law as a person without a legal representative.

Taggart (2020) concluded the Mental Capacity Act requires further reform to ensure wider provision and protection is provided to those classified as elderly and vulnerable. The need to carefully consider prosecutions under S.44 of the act should

do so as a means of reflecting the vulnerabilities of individuals, although further clarification of S.44 is always necessary as the 'elaborate definitions' within the act make it difficult to prosecute all cases of abuse in the same way. It was also argued that the Mental Capacity Act should incorporate and protect allegations of abuse carried out under an Enduring Power of Attorney as there is little in the means of protection for those who have been subjected to abuse, with an Enduring Power of Attorney.

2.5 - Criminal Justice Response:

The threat of elder abuse is only expected to grow and as the population ages, it is vital that there are preventative means to ensure those classified as 'elderly' and 'vulnerable' are adequately protected in the criminal justice system, against abuse with those with authority over their affairs. There is a greater need now to ensure collaborative working amongst the judicial system and public and third sector organisations to ensure safeguarding concerns are highlighted and elderly people are adequately protected. Recommendations of multi-agency co-operation was identified as being critical in ensuring the protection of elderly people from abuse by Lelkes and O'Sullivan (2020). The need for further safeguarding provisions and multidisciplinary teams in local areas will aid in ensuring the sharing of information of suspected abuse between different public sector organisations will adequately protect societies most vulnerable so that suitable courses of action can be taken to eliminate the risk of long-term financial damage.

Baker et al (2016) stresses a variety of important points to be considered in terms of tackling and minimising the risk of elder abuse before it occurs. They begin by discussing the direct impacts on the individual themselves, being diminished quality of life, heavy reliance on social, health and public services and many being emotionally distressed and disturbed as a result of abuse. Along with direct implications of abuse, comes the wider impacts such as adding to poverty levels, impacts to the economy through loss of revenue and potential higher reported crime rates if the abuse is followed up through the relevant channels.

The importance of protection for the elderly was highlighted in Baker et al (2016) publication 'Interventions for Preventing Abuse in the Elderly' where it was stressed to report any concerns of abuse that is witnessed. Awareness campaigns targeting

the younger population to be more vigilant was encouraged and 'elderly friendly' policies introduced with the aim of promoting positive relationships with elderly and younger people with the hope of building confidence. It is thought that if relationships are formed between the elderly and the younger generation, elderly people themselves are more likely to have the confidence to report or communicate any concerns they may have if they think their Power of Attorney is not acting in their best interests, in turn could make them less reliant on others and gain independence to manage their own affairs, while they are still able to. Also, as outlined previously by Payne (2008), the fact that elder abuse has only recently been criminalised, may mean that those suffering from abuse are not fully aware of the protection now available to them if there is suspicion by themselves that their POA is acting unlawfully in regards to their finances.

Payne (2008) goes on to discuss the implementation of mandatory reporting of suspected cases of abuse when witnessed by professionals is also encouraging to further protect elderly people, with failing to report cases carrying criminal or civil penalties. Professionals such as social care workers and doctors are amongst those required to report allegations of abuse to allow the criminal justice system to investigate thoroughly. However, one difficulty to be considered is with differences in opinion and whether one person would consider abuse as intending to cause harm to the elderly person, against someone else's opinion of all violations against elderly people. With doctors specifically, there is the aspect of patient-doctor confidentiality to be overseen if there is genuine concern that the elderly individual is being emotionally, physically, or financially abused.

Targeting potential abuse and holding individuals accountable will always be a matter for the criminal justice system to review. Wuth (2013) highlights the police specifically appear 'reluctant to investigate' abuse claims carried out by a Power of Attorney as they are generally family matters (Davies et al, 2014), meaning those cases that are reported are often unlikely to materialise if the police do not investigate. It is also believed to be more difficult for the elderly person themselves to report the abuse as they often are fearful of the expense of legal representation and also knowing who to ask for help, without people assuming their capacity is questionable (Stewart, 2012, Cockburn et al, 2018). In a publication by HMCPSP and HMICFRS (2019), failings by Police forces in the UK were identified in respect of

elder abuse as a whole, and further reform has been identified as needing to protect societies most vulnerable. The issue of safeguarding was key to identifying the extent of elder abuse and what the police have failed to do to date. Firstly, they do not categorise elder abuse differently to any other form of abuse and the report identified that there is little evidence to suggest they treat the needs of elderly people any differently to other vulnerable people. Due to age and often medical vulnerabilities, it was found that the Police particularly reacted 'poorly' to the complex needs of elderly people, which could suggest why elderly abuse is one of the most underreported crimes due to the Police's handling with previous allegations of abuse.

It was highlighted that there is a greater need for partnership working, particularly between the Police and CPS to hold those responsible held to account. With particular focus on financial abuse, the report carried out by HMCPSP and HMICFRS (2019) indicated the need for clear evidence to be brought against someone accused of abuse, to ensure the welfare of the elderly individual is adequately protected by the criminal justice system. While the report acknowledges that not all police forces have good rapport and safeguarding arrangements with local authorities, it does highlight the need to ensure every effort is made to make the process of reporting and acting on allegations of abuse easier. If the correct avenues are followed out by the police and local authorities, and adequate evidence produced to the Office of the Public Guardian, it ensures that those suspected of abuse are suspended from duties to ensure that elderly people are adequately represented by the criminal justice system.

2.6 - Conclusion:

Laakkonen et al (2008) suggests that society as a whole, bears the responsibility of protecting elderly people from abuse, whether that is abuse carried out by any individual or by a Power of Attorney. The element of capacity will always be a contentious aspect in respect of power of attorneys, and Johnston (2005) suggests that the individual granting the Power of Attorney 'must have anticipated the circumstances' which were likely to occur if someone else were to manage their

affairs, although it could be argued that they do not always anticipate the level of abuse against them if they trust the person appointed.

Often referred to as a living will, Power of Attorneys and their application make it difficult for individuals to remain in control of their affairs while they have the capacity, often leading to the greater exposure of abuse. It is crucial that while a person has the capacity, they should also be informed of any changes in financial matters in regard to their affairs, and there should be the opportunity for them to appeal any decisions that they believe contradict their legal arrangement with their Power of Attorney. With the collaboration and multi-agency work force within the criminal justice system, there is the hope that allegations of financial abuse particularly carried out by Power of Attorney's will be managed efficiently to ensure there is protection for the elderly regardless of whether they have capacity or not.

Academics have discussed the aspects associated with power of attorneys and it still remains unanswered as to whether a power of attorney exposes the risk of financial abuse or whether it is an issue to be assumed likely to occur if someone is appointed. Careful consideration should always be taken before appointing a representative, and capacity should be approached with care and attention to ensure the legal arrangement is entered into willingly and that the elderly person understands the relationship they are entering into. Past research has identified several flaws in appointing a Power of Attorney and further research will be carried out to gather opinion on whether appointing someone to manage your affairs is still appropriate in the modern day due to the ever-growing risk of financial abuse. It is still to be determined if any sole agency can be held accountable to the rates of financial abuse by a Power of Attorney or whether a person should only be appointed to look after another person's affairs when they have lost capacity completely.

Chapter 3 - Methodology

As the population continues to age and as society moves ever closer to a digital world, it is evident that the threat of financial abuse of the elderly will continue to grow. That being said, current understanding and research *or lack of* around the aspect of elder abuse is concerning. To date, there appears to be minimal research on the subject matter making it difficult to understand how the public view the current threat of abuse. The lack of publications and/or accessibility of documents relating to financial abuse of the elderly has encouraged the researcher to carry out more in-depth research to gauge the current understanding of elder abuse and to explore the wider impacts it has on society as a whole. Although there has been research conducted previously by academics, some publications appear to be outdated and do not currently consider the development of the digital world and the risk this poses to individual's financial matters, nor does it consider the ease of access to individuals finances when holding legal authority over a person's affairs. As a means of obtaining information to allow for conclusions to be made, various data collection methods have been used to fully appreciate how the wider population view the threat of elder abuse, to draw on conclusions as to whether more safeguarding provisions should be implemented to further protect the elderly and whether the public view the ease of obtaining a power of attorney as appropriate in the current climate.

As identified within previous literature and highlighted within the literature review chapter, Payne (2008) believes that there is more exposure in respect of financial abuse in the current climate but identifies there is very little preventative means to protect one of society's most vulnerable. The researcher intended to carry out more detailed research to explore and understand the current prospective and to use such results to evaluate public opinion on whether or not legal relationships such as power of attorneys can increase the risk of financial abuse and what the public believes is the most appropriate way to protect individuals as they age. Laakkonen et al (2008) indicates that society as a whole is responsible for protecting elderly people therefore should have an influence on how processes such as appointment of a power of attorney are granted, considering current evidence of the rate of which financial abuse occurs and how elderly people can be further protected in the future.

To aid with research, the aim of this chapter is to discuss what research methods have been adopted to achieve results and how the researcher believes these will lend itself towards a desired outcome. A variety of research methods have been used for primary research to gather public perception and opinion on the likelihood of financial abuse against an elderly person by their Power of Attorney. The chosen research methods used will be discussed in further detail, with justification as to why those particular methods were used to obtain results, to gauge the public's opinion on the threat of elder abuse and the risk this poses to the criminal justice system, but to also compare it to results and opinions already obtained by academics in past research which will be discussed in a future chapter. Additionally, aspects of methodology will also be identified, highlighting the current theories that aid with the stance on elder abuse and how this has been of benefit to the research topic, backed up by academic theory enabling research to be accurate.

It should be noted that the methods used in this particular project do not aim to resolve the current issue with financial abuse of the elderly, but merely explore public perception and understanding and whether it poses a risk to a large proportion of the population and consider the impacts it has on the criminal justice system. The questions asked were aimed specifically at gathering understanding on how relevant and present financial abuse is within day to day life and to gauge people's understanding as to whether the threat of financial abuse is more or less likely to occur amongst those who have someone administering their affairs. Methods that were used include online questionnaires amongst a variety of people, as well as interviews carried out with a director of a solicitor's firm who would be responsible for appointing power of attorneys (participant 1), along with a professional who works in elder research (participant 2) and individual who cares for and holds power of attorney for a relative (participant 3). It was important to consider viewpoints from a variety of different professions, to see how different organisations experience and deal with the threat of elder abuse, as well as those who currently hold power of attorney for another person and how they may be perceived by the wider public.

Due to current COVID19 restrictions, research has been gathered through online sources to protect both the researcher and participants. A variety of research methods both primary and secondary data collection were exhausted to enable the researcher to draw on conclusions and recommendations for further research. Additionally, the methods used allowed the researcher to analyse the public's perception of the wider issue associated with financial abuse of the elderly. All research was collected with consent, and participation was voluntary, anonymous, and aimed to explore as far as practically possible public opinion on the subject matter. Conclusions will then be made by the researcher as to whether more safeguarding provisions should be adopted to protect the elderly population.

3.1 - Ethical Consideration

Due to the age category related to the subject matter (those being over 65), particular care and consideration was made as to who was asked to participate. Typically, the criminal justice system views many people as being vulnerable, and age is one of those characteristics therefore it was crucial to take care to not further expose individuals vulnerabilities based on their age. Through carrying out research, it became evident that financial abuse had been experienced by some participants' family members, therefore the questions asked were generic, to prevent further distress to the participants, who could opt out at any time. Brooks et al (2019) support this consideration and stress the need for respect when conducting research on a topic as specific as this, to ensure the participant is not triggered by any past experiences they may have encountered.

3.2 - Research Methods

Academics such as Brannelly and Edwards (2017) discuss a 'radical challenge' in the traditional way in which research is carried out and identifies the need for quantitative and qualitative research to both be necessary to allow researchers to gain more knowledge into the subject area. On the other hand, Curzio and Kinn (2005) and Barbour (1999) suggest that researchers should select their research approach carefully depending on the types of questions and answers they expect to obtain, but specify that in some areas a combination of quantitative and qualitative

data collection is necessary as alone they may not answer all questions asked. Johnson et al (2007 p:113) leans towards a mixed methods approach being necessary in the majority of research projects as it 'attempts to consider multiple viewpoints, perspectives, positions, and standpoints' to justify the research collection.

For many years, research has been carried out through either quantitative or qualitative methods, with both research methods being particular to the social sciences (Morgan and Smircich 1980). However, many academics now support the approach of mixed methods in relation to data collection. This combines both quantitative and qualitative methods to add value to research to 'obtain a fuller picture and deeper understanding' (Wilson, 2013 and Hurmerinta-Peltomaki and Nummela, 2006). Although the concept of mixed methods is not new in regard to research, it is being a more widely used phenomena in social science research projects (Johnson et al, 2007), to allow research to be more thorough and varied. Murphy et al (2010) furthers this by suggesting it to be a technique that 'cultivates ideas for future research' and allows for gaps in research to be further explored and/or replicated in other research projects.

3.3 - Research design

To aid with research for this particular subject, it was important to consider if the area to be discussed was relevant and if the results would be achievable. As a specific topic, the general public may have little understanding or consideration for financial abuse of the elderly, particularly if they have never experienced this within their own lives and due to the lack of publicity of such cases of abuse. The design of research took the form of general questions, without being too specific or technical as the researcher believed it would produce more reliable data. It was targeted at those who may have experienced financial abuse in one form or another, whether it be from a professional point of view or a personal consideration along with a small proportion of people who would have no knowledge or may have not considered the extent to which elder abuse occurs. To justify this, the comparison between the knowledge between participants will allow for discussion and conclusions to be made to further expose the threat of elder abuse and to evaluate whether there is enough exposure of elder abuse.

To allow for the storing of information, and due to the ongoing COVID-19 pandemic, the use of online software was used necessary to collate results and allowed the researcher to access results quickly to allow for analysis of data to take place. Google forms was used for the online questionnaire, which grouped results and produced statistical data into graph form to allow for the results to be displayed. This saved time and allowed for the data to be presented with relevance and specifically broke down results by question and response, to allow for coding and analyse to take place.

3.4 - Sampling:

As the subject matter is very specific, selecting the most appropriate methods to the topic was done with care to ensure the desired results were achievable. Careful consideration in particular was made to the age of the participants to ensure the research carried out was done so ethically, to avoid exposing people's vulnerabilities based on their age. Schatzman and Strauss (1973) suggest that the researcher themselves know exactly who to question in regard to their subject area, to enable a desired result. They suggest that targeting certain categories such as gender and status would be beneficial to research, whilst varying with being as random in selection as possible to gather wider public knowledge. The aim of research is particular and specific to the elderly population (those over 65), therefore targeting a particular sample group to question in relation to the topic was paramount in obtaining reliable and accurate results.

To enable ethical data was collected, sampling of around 40 people aged between 18 and 60 years old from a variety of professions was used. The participants from a variety of organisations ranged from government departments, to social care professionals as well as those who would have little work experience with dealing with the subject area, to those who may hold power of attorney for an elderly relative or friend. This was to allow for a variance of opinion based on people's perception of financial abuse and the care of the elderly population.

While many academics support this means of sampling, Glaser (1978) criticises this and indicates that researchers 'go to groups which they believe will maximize the possibilities of obtaining data', which may not be reflective of the wider population, however as the subject is specific, targeting those with no knowledge may not give

accurate results. That being said, minimal research was gathered from those with little or no knowledge to determine if more awareness is required around financial abuse of the elderly so that more people are aware of signs and to also encourage the wider population to protect the elderly population as much as possible.

3.5 - Methods Used for data collection:

In respect of quantitative data collection, surveys or questionnaires were distributed online to consenting adults, and verbal consent given. As discussed by Crichton and Seers (2001), the essence of using quantitative data collection allows for a variance in public opinion through a variety of questions rather than focusing on individual response. By selecting a varied target audience (some being from government backgrounds, others social work backgrounds and those with no subject knowledge) allowed for a broad gathering of opinion that was reflective of the wider population and not specific to those solely who have witnessed or experienced elder abuse by a legal representative. The researcher considered the types of questions to be asked to ensure the quality of the answers given, which would allow for conclusions to be made as to whether more awareness is required to highlight the extent to which financial abuse occurs.

Additionally, interviews were conducted with three individuals, all with a varied background. The first was carried out with a participant who holds power of attorney for a relative with complex needs, the second with a professional who researches the elderly population and the third with a director of a solicitor's firm who oversees the appointment of power of attorneys. The difference in professions allowed for a broader understanding on the current threat of elder abuse, as well as exploring how those with legal authority over another's affairs view the assumption that abuse may be more likely to occur.

3.6 - Analysis of methods

Bassett and Bassett (2003) discusses the benefits of using quantitative data collection methods as they lend themselves towards a powerful outcome, in the sense that mass amounts of information can be gathered based on public perception. In relation to this, the use of questionnaires was adopted and exhausted

as far as possible to prompt discussion with the participants. Some questions were used to gather opinion through multiple choice questions, whereas other questions required explanations to given answers to prompt the participants to carefully consider and give opinion on financial abuse. Hooley et al (2012) further discuss questionnaires or online surveys as being cost effective and allows for rapid gathering of data (Bowden and Fleming, 2009), along with results being easily accessible to those who require it, and the results can be stored electronically to be environmentally friendly. Due to the current COVID19 crisis, the use of online survey was the most appropriate means of data collection, compared to distributing questionnaires out in person, to comply with government restrictions. The use of online surveys allowed for target audience to be specifically targeted, as well as the environmental benefits, and allowed for anonymity of participants (Hooley et al, 2006 as cited by Hooley et al, 2012).

While online surveys provide many advantages to data collection, some academics such as Roberts and Parks (2001) argue that the trustworthiness of using online sources is questionable compared to handing out surveys face to face and often many fail to complete online surveys due to lack of obligation or pressure to complete when handed a survey in person, resulting in a lower response rate (Fan and Shih 2008). There is also the aspect of technology failings and often many participants can lose interest in completing the survey due to length and complexity of the questions asked (Hooley et al, 2006 as cited by Hooley et al, 2012). To minimise the risk of this occurring, the questions asked were tailored, clear and written in a simple manner with explanations given to questions that may be more difficult to answer due to terminology. If the research were to be replicated at a later stage, a combination of online surveys and hand distributed questionnaires may be adopted to achieve a higher response rate, as well as prompting further discussions with participants in person.

Additionally, many academics lean on research theories such as interpretivism and positivism to improve the quality of research and explore the use of interviews as a means of data collection, whereby information is gathered by exploring how the 'social world is experienced and understood' (Brooks et al, 2019). Brooks et al (2019) discuss the benefits of interviews in research projects as expanding on assumptions that society already has, drawing on personal experiences to add

substance to current knowledge. Alshenqeeti (2014) suggests that interviews gather 'non-numerical data' and 'seeks to explore how people... behave, experience and understand' social behaviours such as financial abuse of the elderly population. As a subject not widely discussed, selecting interviews as a form of data collection for this particular project allowed for professionals to express understanding which was then used in comparison with data collected from online surveys against those with minimal knowledge on the matter.

The most appropriate research methods were used to gather understanding on the aspect of elder abuse, however if the research were to be repeated again in the future, the researcher would consider targeting more respondents for surveys/questionnaires as well as conducting formal interviews with a wider audience to explore the wider public perception. It would be interesting for future studies to gather opinions from individuals directly associated with the criminal justice system to explore their views on how elder abuse affects the system directly and whether there is enough protection or safeguarding provisions in place for those considered elderly and vulnerable.

Chapter 4 - Data Analysis

Through conducting research through various means including both quantitative and qualitative methods, several themes became quite evident and key trends were discussed with participants about the general understanding of financial abuse of the elderly. The aspect of coding was exercised to capture and interpret large amounts of data collected, to narrow down findings to allow analysis to be possible. Saldana (2009) discusses coding to involve 'essence capturing' which would lend itself to defining themes or categories to be analysed, making it relevant to the subject matter and helps the researcher to focus on statistical data gathered. Fereday and Muir-Cochrane (2006) discusses the most appropriate form of coding relating to a research project such as this to be inductive coding which allows participants discussions to be categorised into themes, for ease of grouping similar topics under a specific title to allow for both quantitative and qualitative results to be analysed.

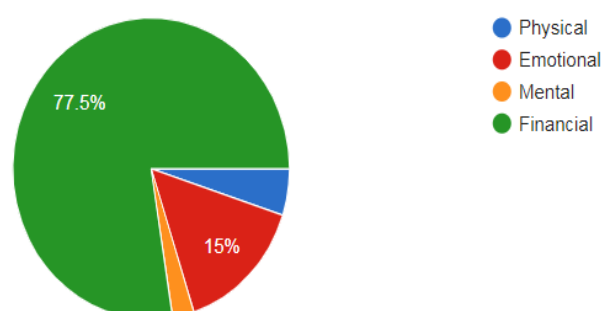
The emerging themes that became apparent through both results achieved through questionnaires and interviews involved elderly people and their vulnerabilities and capacity, family members and the potential threat they can cause to elderly people if appointed as a legal representative, the growing threat of technology and its development and the prospect of risk management to further protect elderly people in the future. The following chapters aim to use both coding and the triangulation theory to analyse the data collected to allow for further discussion, conclusions, and recommendations to be made for future research on the extent of which financial abuse occurs. ***For the purposes of displaying findings, responses from interviewing will be defined as participant 1,2 and 3.***

As an introduction to the questionnaire, participants were asked to express what they believed to be the most common form of abuse – physical, emotional, mental, or financial. The purpose was to consider whether the general public fully acknowledged that financial abuse is a growing cause for concern, particularly with elderly people and if they were currently aware of the rate of which financial abuse occurs. The below graph (graph 1) displays the results gathered, from 40 participants, and clearly shows that over three quarters of those asked (77.5%), believe financial abuse to be the most common form of abuse and therefore the biggest threat to the elderly population. Participant 2 believes financial abuse is the

less discussed form of abuse but did not comment on whether they believed it be the most common. Although the result shown on the graph below was surprising (assumption based on participant 2's response being less spoken about), it benefited the remainder of the questions as it proved that knowledge on financial abuse was more common than first thought and therefore allowed for further discussions to be had about the subject matter and prompted further discussion.

What do you believe to be the most common form of elderly abuse?

40 responses



Graph 1 – Types of abuse

Participants were also asked to discuss their reasoning for selecting one form of abuse, and many answers were similar and outlined capacity or understanding of finances and online fraud crimes to be a justification to their answer. One participant stated that their previous line of work as a police officer saw the majority of accusations of elder abuse involving a combination of financial and physical abuse and often greed was a contributing factor particularly with family members for carrying out abuse on an elderly person. Others working in Government Departments were persuaded by frequent incidents reported to them regarding family members withholding funds such as state pension payments from elderly people and outlined that due to age and vulnerabilities, elderly people are more likely to be manipulated over their finances.

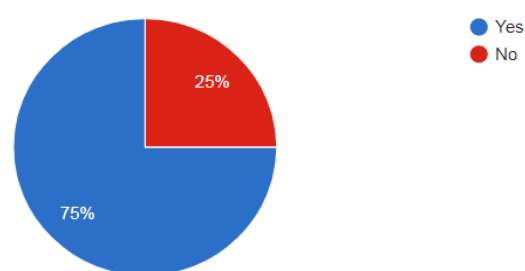
Vulnerabilities

A dominant theme of vulnerability was highlighted in both the online questionnaire and interviews with participants, with particular focus on the age concern and exposures of elderly people. The questionnaires conducted brought about individual's opinions that elderly people are more vulnerable and are more

susceptible to abuse than someone who is younger. It was suggested that the growing development of technology and lack of understanding by elderly people was a contributing factor of abuse and the belief is that someone who is elderly would have less knowledge on technology and the threat it poses as it may not be something that is used by someone of age on a daily basis. The below graph (graph 2) reflects this, with 75% of people agreeing that the increased age of an individual further exposes them to the risk of financial abuse. Additionally, graph 3 displays the general assumption that age alone is a characteristic that further exposes a person to abuse, with 52.5% of people agreeing and 37.5% strongly agreeing. On the other hand, while participant 3 agreed that age is sometimes a contributing factor to vulnerability, they also suggested that both physical and mental capabilities can in turn make an individual more vulnerable, particularly as they age and discussed the aspect of confidence as a contributing factor to relying on a family member or legal representative for assistance, particularly with financial matters. This suggests that incapacity of the mind may not be the sole reason for entering into a power of attorney, but a physical restriction or illness may encourage a legal relationship to be formed earlier before capacity is questioned.

Abuse occurs where vulnerabilities are exposed. Do you agree that an elderly person is more likely to be abused than someone from the younger generation?

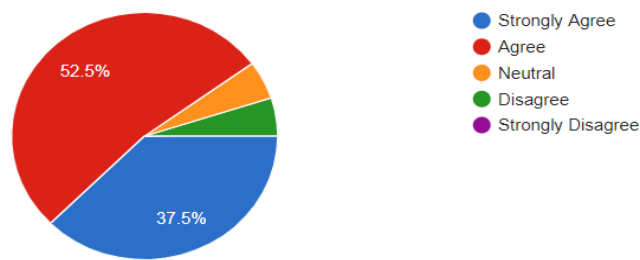
40 responses



Graph 2 – Correlation between age and abuse

The Criminal Justice System states that a person can be vulnerable based on a variety of characteristics e.g. their age. To what extent do you agree that elderly people are vulnerable?

40 responses



Graph 3 – Age as a characteristic and explored as a vulnerability

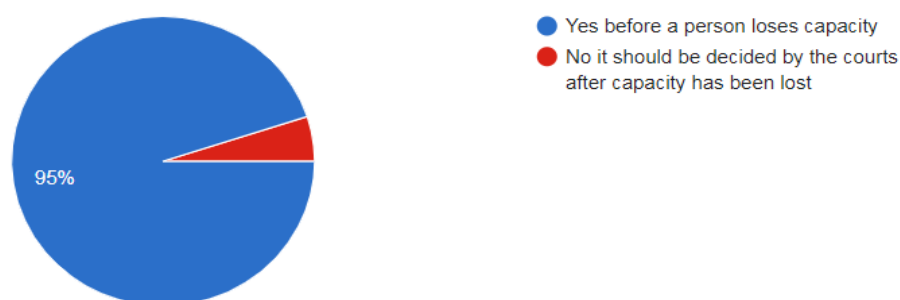
The question of capacity was also frequently discussed under vulnerabilities of elderly people and questions were asked about when people believed was the right time to appoint a legal representative. The below graph (graph 4) displays results from the questionnaire, highlighting responses with 95% of people believing the individual should have an input in who becomes their power of attorney, provided they have the capacity to make such a decision. Although the general assumption has been made (through secondary research) that abuse is more likely to occur by someone known directly to the individual, the general public believe that the elderly person should have the right to make provisions for their finances for a time where they are unable to manage their affairs themselves. Overall, respondents recommended that a power of attorney should act in the best interests of the elderly person, and should therefore only exercise their powers granted under the power of attorney when the donor is no longer able to decide for themselves and should not misuse their powers to benefit themselves.

Participant 2 also agreed with this and suggested that the influence of the elderly persons views ensures that the most suitable person is given the authority to make decisions and ensures that the elderly persons wish is fully considered. They also suggested that early appointment of a power of attorney allows for any family disputes to be ironed out, supported by a response from the questionnaire suggesting that trust in the individual is key but may not always the case. The graph below suggests that when someone's finances are in question, a personal view should be taken to ensure the donor is aware of who will administer their affairs for a

time where they are no longer able to, and makes them aware of the potential risk of financial abuse where they have appointed a representative.

In your opinion, should legal arrangements be formed before or after a person loses capacity e.g. is it acceptable for the elderly person to appoint a Power of Attorney when they have capacity or should it be decided by the legal system when they have lost capacity? (provided a suitable capacity assessment has been carried out)

40 responses



Graph 4 – An appropriate time to appoint a power of attorney

Family members

Both qualitative and quantitative results obtained from data collection brought about discussions on the assumption that family members are more likely to abuse elderly people and are particularly more likely to abuse the power they have under a power of attorney. This was an issue brought up frequently, with many participants believing that having a power of attorney that is known to the elderly person, further exposes them to the risk of financial abuse. Participant 1 from interviewing expressed concerns on having a family member as a legal representative as a 'potential conflict of interest' and highlighted that increased Power of Attorney's have been registered under the current COVID-19 pandemic, causing concern. With many elderly people confined to their homes, more obligations were placed upon family members to carry out day to day tasks such as shopping and financial matters and at times required legal documentation such as a power of attorney to give family members such rights and access to people's funds. Although not yet known to the extent of which the COVID-19 pandemic has increased the risk of financial abuse, an assumption was formed that due to increased Power of attorney's being registered under such lockdown measures, may further increase the risk of financial abuse in the future as the legal arrangement is already in force.

The concept of family members having authority of an elderly person's affairs was somewhat divided with respondents from the questionnaire. Many stated that family members understand the dynamics of the individual and their needs and can make the logistics of decision making easier. However, many suggested that a family member could make decisions for their own gain, they can often exploit elderly people and therefore an independent person would be more suited as they would not be set to gain financially from the elderly person. Responses appeared to be split between a family member being an appropriate person acting and an independent person acting as a representative, however several comments were made outlining that regardless of who has the authority, monitoring of the elderly persons financial accounts must be carried out on a regular basis and having more than one legal representative should eliminate the risk of personal gain and abuse. Participant 3 argued that monitoring a Power of Attorney's actions may not be possible, and believes that the Office of the Public Guardian should step in on a case by case basis to satisfy that the appointed person is acting in accordance with their powers and not abusing such authority.

Technology

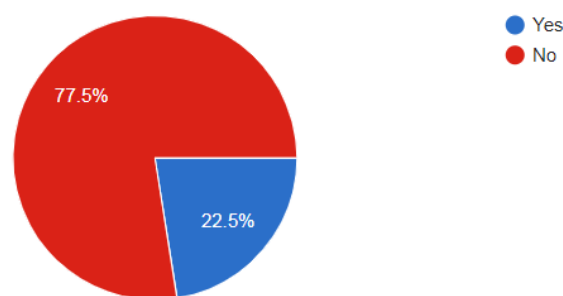
As outlined in previous chapters, the development of technology including online resources such as banking poses a threat to many, not only elderly people but the wider population. However, compared to someone from the younger generation, who has been brought up using computers and may be heavily involved in the evolution of technology, elderly people may not have the skill, knowledge and understanding of how the digital world works and its relevance in the 21st century. Some responses from the questionnaire supported the opinion that regardless of age, anyone can fall victim to financial abuse or misappropriation of funds, while others expressed opinions that the digital world opens up the possibility of abuse due to the speed that technology is evolving at. One participant outlined that the internet itself is a large domain and the ease of accessing personal information is far more prominent than before. Another participant discussed that abuse is likely to occur through online banking and the accessibility of funds is far easier to obtain and often many elderly people are unaware that large transactions have happened, coupled with the fact that a family member may pose as the elderly person, provided they have online security passwords, and may therefore go undetected.

When asked whether respondents believed that a Power of Attorney is more likely to abuse an elderly person as technology continues to develop, a mixed response was given. Many outlined that if someone were to cause abuse financially, they may not need to rely on technology as a means of accessing funds as they would be legally allowed to withdraw large sums of money at in branch bank. Others believed that the mindset of the Power of Attorney would remain the same, regardless of whether technology develops or not, while others believed that technology makes the process of obtaining money easier, and may be encouraged or tempted by their own greed to take funds that are intended to be used to protect the elderly person.

Risk Management

Do you think there are enough safe guarding processes in place to protect elderly people from financial abuse?

40 responses



Graph 5- Safeguarding provisions to protect against financial abuse.

The above graph (graph 5) represents respondent's opinions on whether elderly people are adequately protected from abuse such as financial abuse. All 3 respondents from interviewing also agreed that elderly people are continuously failed to be protected against abuse and made recommendations to protect the aging population in the future and all made reference to the process of obtaining a power of attorney as not being stringent enough to protect the donor.

Participant 1 in particular expressed concerns that mass amounts of power of attorneys are registered and therefore had worries that not all are carefully considered enough to protect individuals. They suggested a possible recommendation as informing the prospective power of attorney about their obligations and powers under the document, to ensure they fully understand what is

expected of them, as many fail to read all of the document in its entirety, and often use the lack of understanding of legal terminology as a defence or reason if there are ever investigated for abuse at a later stage. There was also mention of a requirement of more than one person to be appointed to administer the legal duty as well as informed literature given to the donor to ensure they are fully aware of the risks of appointing someone, provided they have the capacity and understanding of what they are entering in to.

Participant 3 suggested that the application process of obtaining a power of attorney in the modern context is far too simplistic, and at a minimum should be verified by an official body or solicitor at application stage to ensure suitability for the role, as well as regular monitoring by the Office of the Public Guardian to ensure the acting Power of Attorney is still fit for purpose. Many respondents from the questionnaire were of the opinion that regardless of whether a power of attorney has been granted, while a person remains of sound mind, they should remain in charge of their finances, regardless of whether they want to make financial decisions or not. The general consensus was that as a society, support should be given to ensure the independence of the individual for as long as practically possible, to prevent the mismanagement of financial affairs and to avoid heavy reliance on social services and other public sectors and ultimately to reduce the risk of power of attorney's exploiting elderly people's finances.

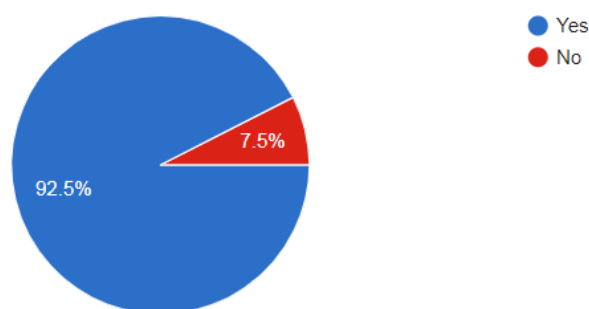
Conclusion

The concluding question from the questionnaire reiterated the initial belief of the general public that having a power of attorney, increases the risk of financial abuse amongst the elderly population and the risk of abuse is somewhat greater than someone without a power of attorney. 92.5% of respondents agreed that a power of attorney is more likely to financially abuse an elderly person, due to the misuse of power granted to them by such legal document, and the majority of respondents, both from qualitative and quantitative data collection expressed concerns that the elderly population is far less protected than they need to be. It would be fair to comment that all respondents would if given the chance, implement future safeguarding provisions to adequately protect the aging population, and for those who had little knowledge of the extent of which financial abuse occurs, they may be

more informed to recognise tell-tale signs that abuse is occurring and may be encouraged to report any evidence of a power of attorney abusing their powers.

Do you agree that having a Power of Attorney exposes the risk of financial abuse?

40 responses



Graph 6 – Overall opinion on power of attorneys increasing the risk of financial abuse.

In summary, the majority of responses were one sided, in favour of recognising financial abuse as a key issue amongst elderly people, and no one respondent expressed any arguments to discount the initial theory. All participants from interviewing appreciated the extent of which elderly financial abuse occurs and all made recommendations to further protect the elderly population in the future. Participant 2 highlighted a dominant feature associated with financial abuse of the elderly as not only directly impacting the individual but stated that most welfare services suffer as a result as most are funded from the assets of elderly people's donation, e.g., charities and churches. They expressed concern that smaller organisations function from the generosity and donations from elderly people as a source of income, which are in turn provided to those in the wider community as a means of support and care, something that is underreported and under-researched in this field and would benefit from additional research in the future.

Chapter 5 – Discussion

Chen et al (2014) suggests that the mistreatment or abuse of elderly people has expanded further beyond what was first thought and now poses a threat to not just the victim of abuse but places tremendous societal costs to ensure elderly people are protected. Academic research coupled with primary data collection has revealed that elder abuse is a growing threat to society as a whole and remains to be globally expanding with the development of technology and *is* despite initial belief, recognised by the wider population. Results from primary data reveals that the wider population are aware of financial abuse and how that effects the elderly and contradicts academic research by suggesting people would only have knowledge of this form of abuse if they had directly witnessed it happening. The following chapter will draw on two main aspects: a discussion on abuse, comparing primary and secondary data, including financial abuse and what the research has revealed about the extent of which abuse occurs and public perception and secondly the concept of legal arrangements such as power of attorneys and how appropriate they are in ensuring the wellbeing and care for the elderly population. The triangulation theory will bring about findings from primary data, secondary data and evaluate a concluding factor which will allow for recommendations for future research and summarise how effective this research has been in exploring the extent and knowledge of the wider population regarding financial abuse. It will also be used to discuss differences from primary and secondary data collection and will consider both academic viewpoints and the wider populations opinions on abuse.

From primary data collected, the results reveal that the wider population acknowledge financial abuse to be an issue which directly affects the elderly generation, however academic research from secondary sources provide less insight to the rate of which financial abuse occurs and focus primarily on other forms of abuse such as physical and mental. Supported by Black (2008), financial abuse is the third most common form of abuse directly affecting the elderly population yet is the fastest growing, and the least reported, therefore little literature exists on the matter.

Academics such as Black (2008) and Gibson and Honn (2012) indicate part of the issue with underreporting being associated with pride amongst elderly people and

suggest that if someone is being financially abused knowingly, an elderly person may be more inclined to hide financial worries, rather than exposing the abuse as it occurs. Another key aspect identified from secondary research revealed that elderly people, assuming they have capacity, would be less likely to report abuse happening if carried out by a family member, due to the risk of further abuse, guilt, or fear that the abuser may restrict all levels of care to them, resulting in chances of testifying particularly in a parent/child relationship considerably less. Primary data revealed that participants believed that family members are more likely to financially abuse an elderly person, yet indicate that when it comes to legal arrangements, a family member is more suited to fulfil this obligation due to understanding the family dynamic, therefore contradicting themselves.

The key difference in primary and secondary data collection ultimately came down to capacity and when the likes of a Power of Attorney should be enforced. On reflection of literature produced by the likes of Matthews (2004), the assumption was made that elderly people should make future arrangements at a time where they are of sound mind, appointing someone whom they trust to manage their financial affairs, regardless of whether their capacity was weakening and allowing the Power of Attorney to be effective immediately. However, primary data revealed that participants although agreeing it should be a trusted person to act for the elderly person and provisions and planning should be made for their later years, they were of the opinion that this arrangement should **only** be enforced at a time where capacity is diminished and there is a risk to the individual and until such time as the individual should cause harm to themselves, they should remain in charge of their own financial matters, to avoid exploitation.

Prevention/awareness:

Many academics such as Jackson (2014) and Wolf (2003) would argue that the only 'intervention' currently enforced is prosecution, yet statistical data suggests that very few cases of elder abuse are rightfully prosecuted, questioning how responsive the criminal justice system is in adequately protecting elderly people. Hafemeister and Jackson (2010 and 2013) would argue that the complexities with capacity and the form of abuse make it difficult to prosecute someone for abusing the elderly, and cases of abuse involving physical harm are more likely to be followed up through to prosecution, because of physical evidence of wrongdoing. Additionally, family

abusers make the concept of investigation more complex (Jackson, 2014) as many can manipulate elderly people into making them think they are acting in their best interests, particularly if the elderly person is lacking in capacity and would be unable to testify against them (Gassoumis et al, 2013). According to Mion and Momeyer (2019), only 4-7% of elder abuse cases are reported, and supports Jackson's idea of being fearful of contesting against family members. Respondents from the questionnaire and interviewing all indicated that further safeguarding provision is required to ensure elderly people are suitably protected, supported by Brijnath et al (2020), suggesting that awareness and exposure of abuse is one means of tackling the rate of which it occurs and may involve more community-based awareness as a means of protection. Suitable provision could include training front line care workers to notice and report any forms of abuse when they happen, informing those who are elderly with capacity about the risks of entering into a power of attorney and ensuring at a minimum that the legal representative is fully aware of their obligations before becoming a legal representative (McCawley et al, 2014).

Black (2008) also discusses the need for limited powers to be granted under a power of attorney to ensure that the elderly persons assets are not fully exploited and participant 1 supported the idea of having more than one Power of Attorney to ensure the financial decision is considered and agreed on by two people to fully appreciate the 'best interests' of the elderly person, rather than one who may abuse the elderly person, with the hope of financially gaining and going undetected. The other alternatives would be to heavily involve the court systems in the decision-making process and allow them to appoint a suitable candidate when capacity is lost or have an independent Power of Attorney to ensure the acting person does not act for personal gain.

5.1 - Conclusions and recommendations

Due to restrictions in data collection due to the COVID-19 pandemic, it is difficult to determine if the results from this research project have proved or disproved the initial theory that elderly people are more likely to be financially abused by their power of attorney. Primary data concluded that participants agree that having a power of attorney increases the risk of financial abuse due to ease of access to financial matters, yet information gathered from secondary data is broad and not specific enough to Power of Attorney's alone. Recommendations have been made on how to prevent and minimise the risk of abuse, yet the researcher does not believe that enough statistical data has been collected and can persuade this debate one way or the other. If the research were to be repeated or expanded upon in the future, the recommendation would be to involve more participants in both the questionnaire and interview process, to have a wider reflection of the wider population, rather than being limited to a select few and to expand further on the implications and impacts financial abuse has on the criminal justice system. If time allowed, possible research could have involved the court system and how often financial abuse of the elderly is presented to them as a means of displaying factual, up to date information, but this is an aspect of further research that can be conducted at a later stage.

Of the results achieved, both primary and secondary data have similarities and differences, but all acknowledge financial abuse to be a growing, concerning issue that affects the elderly population. Primary data ultimately revealed the wider populations view on power of attorneys as essential when a person is no longer able to care for themselves, yet also acknowledges that family members can gain financially through abuse and appreciate it to be an issue that requires adequate knowledge and awareness on to suitably protect one of society's most vulnerable. Participants also expressed strong views that a power of attorney should only be enforced after capacity is lost or diminished and should therefore not be forced upon an elderly person while they are of sound mind. One of the main difficulties with research such as this, is there is no way of knowing how the rate of financial abuse will grow in the future, and whether technological advances will further aid financial abuse. There is hope that along with technological advances, advances in health and medicine will slow down diseases of the mind such as dementia, resulting in

elderly people maintaining capacity for longer and becoming less reliant on family members, as a result minimising the need to enter into legal arrangements such as power of attorneys and reducing the risk of financial abuse or exploitation.

In conclusion, although the research may not have proved or disproved the aim, it has exposed various failings in a variety of senses to be considered in future research. Firstly, there is an importance to execute moral education within society, to teach on recognising the wrongdoing of exposing elderly victims to abuse, regardless of whether you hold Power of Attorney or not, failings within the courts and governing bodies such as the Office of the Public Guardian for allowing a process to be executed without thorough consideration of who is applying for attorney and not confirming the attorney has understood fully what their duties are and the criminal justice system for under prosecuting perpetrators of financial abuse, leaving the elderly population exposed to future harm.

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