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Researching the financial abuse of individuals lacking mental capacity

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Table 1 Individuals with referrals (all types of abuse) in England and by region, 2014-15, 2015-16

	Individuals with referrals		%		Total per 100,000 population	
	2014-15	2015-16	2014-15	2015-16	2014-15	2015-16
England	**103,900**	**102,970**	**100**	**100**	**243**	**239**
East Midlands	8,160	8,575	8	8	222	231
East of England	11,035	13,610	11	13	233	285
London	17,240	13,665	17	13	260	203
North East	4,375	9,975	4	10	209	475
North West	16,980	15,225	16	15	302	269
South East	14,350	16,670	14	16	206	237
South West	10,135	9,425	10	9	233	215
West Midlands	14,380	9,475	14	9	323	211
Yorks & the Humber	7,245	6,355	7	6	172	150

(taken from NHS Digital, Table 1.2)

Table 2 Concluded referrals by type of risk, 2014-15, 2015-16, England

Type of risk	2014-15 %	2015-16 %	2014-15 Number	2015-16 Number
Neglect & omission	32	34	40,885	42,315
Physical	27	26	34,385	32,125
Financial & material	17	16	21,935	20,565
Psychological & emotional	15	15	19,760	18,270
Sexual	5	5	6,255	6,045
Institutional	3	4	3,965	4,850
Discriminatory	1	1	870	765
Total number of referrals			128,060	124,940

(taken from NHS Digital 2016, Fig 2.1)

Table 3 Mental capacity - concluded referrals where individual lacked capacity, England, 2014-15, 2015-16

Concluded referrals where individual assessed as lacking capacity	2014-15 %	2015-16 %	2014-15 Number	2015-16 Number
Lacks capacity	25	27	25,601	29,725
Does not lack capacity	46	48	48,189	53,625
Don't know	16	12	16,761	13,165
Not recorded	12	14	12,571	15,555
Number of referrals			104,760	112,070

(from NHS Digital 2016, Table 3.1)

Table 4 Concluded referrals where individual assessed as lacking capacity x age, England 2014-15, 2015-16

Age group	Lacks capacity %		Does not lack capacity %		Don't know %		Not recorded %		Total number referrals	
	2014-15	2015-16	2014-15	2015-16	2014-15	2015-16	2014-15	2015-16	2014-15	2015-16
18-64	20	21	51	54	16	11	13	14		
65-74	24	24	50	52	15	11	11	14		
75-84	29	31	44	44	16	12	11	13		
85+	30	32	41	41	18	12	12	14		
Not known	15	7	27	27	9	29	48	37		
Number of referrals	26,370	29,725	48,470	53,625	16,890	13,165	13,030	15,555	104,760	112,070

(taken from NHS Digital 2016, Fig. 3.1)

Table 5 Referrals by case conclusion (%), England, 2014-15, 2015-16

Year	Action taken and risk removed %	Action taken risk reduced %	Action taken risk remains %	No action taken %
2014-15	23	40	8	30
2015-16	20	47	8	26

(taken from NHS Digital 2016, Table 2.8)

Researching the financial abuse of individuals lacking capacity

ABSTRACT:

- **Purpose**

  The paper reports on aspects of an exploratory investigation into the scale and nature of the financial abuse of adults lacking mental capacity.

- **Design/methodology/approach**

  It uses mixed methods: a review of adults safeguarding statistics; analysis of court case findings; classification of types of financial abuse, victims and perpetrators; qualitative exploration of professional views of the nature of financial abuse of those lacking mental capacity; consideration of policy implications.

- **Findings**

  It demonstrates: the significance of financial abuse within the spectrum of abuse experienced by adults at risk; the wide range of both victims lacking capacity being abused and type of financial abuse; its often hidden nature embedded within the family; and the limitations of processes designed to protect.

- **Research limitations/implications**

  The investigation reveals the paucity of statistical data available on the nature of financial abuse and the outcomes of official investigations into reported cases, both of which limit analysis and understanding of the phenomenon.

- **Practical implications**

  It demonstrates the need for greater transparency and consistency in the reporting of safeguarding and legal processes to enable practitioners and policymakers to understand fully the nature and significance of this abuse for both victims and society.

- **Social implications**

  It questions the extent to which existing protective processes are sufficient in terms of safeguarding victims and deterring perpetrators.

- **Originality/value**

  It involves original research that brings together data from a range of sources involved in the protection of a particular hard to reach group of individuals (those lacking capacity) from a particular type of risk (financial abuse).

Introduction

Financial abuse – particularly of vulnerable people – has come to be acknowledged as a significant problem in recent years, largely associated with the public recognition of abuse of other sorts (physical, neglect, sexual). The research reported in this paper looks at one particular type of financial abuse – the abuse of people lacking mental capacity.

While sound estimates of the scale of abuse of all sorts are hard to establish, the extent of financial abuse when it affects people lacking capacity is particularly difficult to assess, largely because of its hidden nature, taking place, as it often does, within the domestic setting and often perpetrated by family members, with no directly observable physical effects and where, especially, many people lacking capacity have no real voice. They may not even be aware of its happening, let alone be able to report it.

This paper reports on aspects of a mixed-methods research study funded by the Dawes Trust into the scale and nature of such financial abuse (and reported in Dalley et al 2017a) comprising: a literature review; analysis of available statistical data on reported instances of financial abuse; interviews with national and local professionals working in the fields of abuse (especially financial) and/or mental capacity about their perceptions of the problem; an analysis of Court of Protection case reports; and a case study of one geographical area (a London borough) drawing on local statistics and the views and experiences of a range of local safeguarding/legal/social work professionals working in the statutory and voluntary sectors in order to build a composite view of the interplay of issues central to the research. The case study method is particularly appropriate in seeking answers to 'how' and 'why' questions while quantitative methods are more concerned with handling 'what', where' and 'when' questions (Yin 2009). The study adopted context-specific definitions of two key concepts – capacity and financial abuse – rather than attempting to construct all-purpose, overarching terms and definitions. This multi-pronged approach, whereby each different type of data source could be triangulated against the others, was chosen as being the most effective in studying such a little-recognised and rarely studied phenomenon.

Theory

In terms of theory, various suggestions have been made to account for the involvement of family members in the perpetration of the financial abuse of those lacking mental capacity. Some have attributed intra-family abuse to the stress and burden of care-giving placed on the relatives of those lacking capacity (Carretero et al 2009); others have argued, in a version of routine activity theory (Setterlund et al 2007; Goergen and Beaulieu 2010), that abuse is likely to happen simply because circumstances exist which allow it to happen – a person at risk, the presence of a likely offender and the absence of a "capable guardian" combine to create the

opportunity for abuse. Indeed, financial abuse may not always be an act of pre-planned fraud but result from an intermittent and/or escalating 'slippery slope' process (Levi 2008). In this study, in relation to intra-family financial abuse, the most apposite framework for considering its occurrence was found to be social exchange theory as proposed by Parrott and Bengston (1999) in which the family is seen as a "site of intergenerational stress, conflict and violence" in contrast to the normative representations of it as a haven based on "moral and normative ideas about trust" (Dixon et al 2010).

The quantitative data: the scale and nature of the problem of financial abuse

Various attempts, in the UK and elsewhere, have been made to establish prevalence rates for abuse in general, mostly of older people, during the past 30 years (Ogg and Bennett 1992; Wainer, Darzins and Owada 2010; Acierno et al 2010). One prominent example is the UK prevalence survey (O'Keeffe et al 2007) undertaken by NatCen and King's College in 2004 of 2,111 people aged 66 and over, weighted to be representative of the UK population of that age living in private households. Of these, 2.6% reported mistreatment by a family member, friend or care-worker. This rose to 4.0% when neighbours and acquaintances were included. Neglect (1.1%), followed by financial abuse (0.7%), and then physical and psychological abuse (both 0.4%), were the most reported types of abuse. The survey excluded people living in residential care as well as those who were prevented from participation by lack of mental capacity or ill-health – and from fear of reprisal by abusers – thus omitting people at greater risk of abuse through mental and physical frailty than their fitter counterparts. In other examples, researchers in Ireland (Fealy et al 2012) found a prevalence rate of 1.3% for financial abuse, and in one study – a representative sample of 5,777 people over 60 in the USA – a substantially higher rate was found, of 5.2% (Acierno et al 2010).

There are methodological problems associated with prevalence surveys of victims variously classified as lacking capacity (hence their exclusion from many studies), and parallel difficulties exist in qualitative studies of people of similar status: problems of factual accuracy and reliability of interview data, together with the ethical objections to interviewing people who, vulnerable through lack of capacity, may not be able to give valid consent. For this study, a decision was made not to conduct interviews with individuals lacking capacity but instead to follow up other data sources. This meant analysing already available statistics and conducting interviews with professionals, concerned predominantly with protecting the interests of individuals at risk of financial abuse, working nationally and locally, to seek their professional opinions on the issues under investigation. These would largely involve social work professionals working in safeguarding services, healthcare workers, advice and policy advisers, lawyers, members of the judiciary and those working in the financial services.

Statistical data: NHS Digital data

In terms of statistics, the starting point was to identify locations where financial abuse might come to light in the official, public domain, such as the courts and statutory safeguarding services, recognising that publicly available statistics are only ever going to describe a small part of actual misbehaviour.

The most useful data identified were the annual statistics published by the Health and Social Care Information Centre (HSCIC), now renamed NHS Digital (NHSD), relating to safeguarding adults referrals received annually by local councils in England. These national data show that financial abuse is one of 7 risks identified as being faced by people with care and support needs and is ranked third in frequency of risk. At national level in the most recent year, 2015-16, 86% of cases were attributed to people known to the victim (including care-workers): the riskiest places were the person's own home, followed by care homes. Of those who were referred under safeguarding procedures, 27% were reported as lacking capacity. The classifications framework used by NHSD states that its category 'lacking capacity' is determined where "an MCA [Mental Capacity Act] assessment concludes an individual lacks capacity to make decisions about the safeguarding incident" (NHSD 2016).

In more detail, the two data sets which best inform the main focus of this paper are i) those dealing with referrals on individuals through to concluded cases, following investigation and ii) the instances of reported risks (there may be more than one abuse risk associated with the same individual). Data relating to a recent two-year period are considered here:

i) Referrals for individuals

In England, in the two years 2014-2015 and 2015-16, there were 103,900 and 102,970 individuals with referrals (all types of abuse) respectively. The numbers can be broken down regionally, with, at one end of the range, 17% of all referrals reported in London in Year 1 (2014-15) and 16% in the South East in Year 2 (2015-16) and, at the other, 4% in the North East (Year 1) and 6% in Yorkshire & Humberside (Year 2) (Table 1). There is some unevenness in their distribution across the country with the number of referrals per 100,000 population averaging at 243 (Year 1) and 239 (Year 2) for England as a whole. Averages range from 323 in West Midlands to 172 in Yorkshire & Humberside in Year 1 and from 475 in the North East to 150 in Yorkshire & Humberside in Year 2.

Table 1 Individuals with referrals (all types of abuse) in England and by region, 2014-15, 2015-16

Analysis shows that overall more females (60%) than males (40%) are the subjects of referrals.

ii) Types of risks from referrals concluded, their location and source of risk

In terms of the 128,060 (2014-15) and 124,940 (2015-16) concluded risks reported nationally, financial & material abuse was found to be the third most common type, after neglect & omission and physical abuse (17% in Year 1 and 16% in Year 2 of the total) (Table 2).

Table 2 Concluded referrals by type of risk, 2014-15, 2015-16, England

A majority of risks relating to financial & material abuse in both years were found to be located in an individual's own home (43%), compared to 36% in care homes, 6% in hospital together with 4% and 3% (in successive years) in community services.

The commonest sources of risk in relation to financial & material abuse, according to NHS Digital, 2016, Fig 2.3, over the two years, are from people 'known to the individual' that is, family, friends and acquaintances, (60% Year 1 and 64% Year 2), with 21% (Year 1) and 15% (Year 2) attributed to the 'social care support services' that is, by care workers, and the remainder, (19% Year 1 and 21% Year 2), to unknown/strangers. To some extent, this may be an artefact of the more restricted lifestyles of many of those reported upon, helping to focus attention away from the 'stranger danger' implicit in much public discourse about financially vulnerable adults.

iii) Capacity issues

Pertinent to this research is the finding that around one quarter of referrals related to people assessed in line with the NHSD classification framework as lacking capacity (Table 3), although this may be an understatement, since information about capacity is missing in over a quarter of referrals.

Table 3 Mental capacity - concluded referrals where individual lacked capacity, England, 2014-15, 2015-16

Lack of capacity is spread across all adult age categories – a reminder that it is not only older age categories affected by capacity issues (Table 4). [The research project was concerned with lack of capacity across all adult age bands – in particular people with traumatic brain injury, mental health problems, learning disabilities and older people with dementia].

Table 4 Concluded referrals where individual assessed as lacking capacity x age, England 2014-15, 2015-16

iv) Case outcomes

By the end of the safeguarding process, in both years, action was taken and the risk removed in a fifth of cases, while in over two fifths, action was taken and the risk was reduced. In 8% of cases, action was taken but the risk remained. No action was taken in over a quarter of cases.

Additional statistics, available for year 1, report that 41% were recorded as 'allegation substantiated', either fully or partially.

Table 5 Referrals by case conclusion (%), England, 2014-15, 2015-16

NHS Digital is the fullest source of information on the range and nature of the types of abuse which are handled by the safeguarding authorities. But, even so, the information is partial and sometimes inconsistent.

Moreover, as seen in Table 5, it deals only with abuse coming to the attention of the safeguarding authorities, and investigated, and possibly acted on, by them but provides no substantive information about outcomes (for victim or perpetrator).

Other data sources: the Office of the Public Guardian and the Court of Protection

Other data sources proved even more limited. Crime statistics (Office of National Statistics 2015) were examined for information on the number of prosecutions for fraud per annum – particularly the category most appropriate for this investigation, 'fraud by abuse of position of trust' – 3% of all fraud – but found the data for these were bundled up into more general categories of fraud and could not be disaggregated (Dalley et al 2017a). In any case, as noted later, a common concern amongst those experts who were interviewed during the course of the research was that cases of financial abuse were rarely prosecuted and thus remain hidden from public record, raising the wider question of how useful this avenue of investigation would be as a useful source of information.

Other possible sources were the Office of the Public Guardian (OPG) and the Court of Protection (CoP) – both established under the Mental Capacity Act 2005 – the CoP having jurisdiction over the property, financial affairs and personal welfare of people who lack mental capacity to make decisions for themselves. (This study was concerned with its jurisdiction over property and financial affairs). The OPG registers Lasting Powers of Attorney (LPAs) and supervises deputies, appointed by the CoP in the absence of attorneys to protect the interests of people lacking capacity, and mounts investigations into possible misbehaviour by attorneys and deputies in the discharge of their duties. The OPG annual report for 2014-15 noted that there had been a 34% increase in the number of LPAs registered since the previous year, thus widening the pool of opportunities for potential misbehaviour in the custodianship of donors' assets – as well as for their appropriate management. It also reported a downturn in the number of safeguarding referrals received in 2014-15 compared to the previous year but at the same time an 18% increase in cases proceeding to full investigation into the possible breach of attorneys' fiduciary duties, up from 628 (out of 2,200 referrals received) to 743 (out of 1970 referrals received).

The Court of Protection (CoP) had also seen a steady increase in the number of applications made to revoke attorneyships and deputyships for similar reasons during the same period (Dalley et al 2017b). The senior judge reported that in 2014 he dealt with 313 safeguarding applications from the Public Guardian dealing with decisions about financial matters compared to 185 the previous year (Lush 2014). He also commented that in the court's experience "financial abuse is almost exclusively perpetrated by close relatives,"(p 11).

However neither of these sources (OPG and CoP) appears to publish detailed and regular statistics, particularly in relation to the detailed outcomes of OPG investigations and the number of LPA revocations by the CoP, which otherwise would throw some light on the overall scale of financial abuse.

Discussion of quantitative data

Of the sources examined as possibly useful to this study, NHS Digital provided the most helpful information. It showed that financial abuse is not uncommon – it ranks third in terms of referrals and types of risk dealt with by local safeguarding authorities. Other sources were examined but were less helpful. A limited picture of

financial misbehaviour also emerges from the OPG and CoP but virtually nothing relating to the financial abuse of people lacking capacity was found in the crime statistics relating to fraud (the only possibly applicable category of offence). But even the NHSD data give little information about the nature of the abuse, the identity of perpetrators or victims, or the real outcomes of cases. Moreover, the biggest data source (NHSD) bears limited proven relationship to the other two (OPG and CoP). It is impossible to say how many of the individuals who come to the attention of the safeguarding authorities are also found to be under the protection of the OPG and CoP. It is quite likely that most NHSD-reported victims are not donors of LPAs, therefore are unregistered with the OPG and thus fall outside the aegis of CoP jurisdiction.

The qualitative data: financial abuse in action

While the safeguarding data gathered from local authorities are comprehensive in terms of numbers and types of referrals made, they do not go into further detail about the substance of the abuse involved. To obtain more detailed information, it was necessary to examine the narrative accounts of research interviewees, all of whom worked with individuals who had experienced, or were at risk of, abuse, in a variety of contexts. From these it thus became possible to discover something about the range of behaviour and action that constitutes abuse – at the same time revealing some of the challenges and tensions facing those working with 'at risk' clients concerned with getting the balance right between safeguarding and protecting their wellbeing as opposed to interfering unjustifiably in their rights to autonomy and independence (two competing themes running through much of social work and family law).

Professional views of the issue

Thirty-five professionals, were interviewed for this part of the project (from over 50 consulted in total), identified and selected as key actors at local level in the case study or occupying positions of prominence nationally. They were able to provide examples of instances of financial abuse which either they themselves had encountered during the course of their daily work or had been reported to them via advice services or by colleagues. The interviewees comprised:

- local authority safeguarding team members (managers and front-line);
- voluntary organisation managers as well as policy and advice workers; dementia care nurses; therapists; mental health workers;
- police officers;
- professionals in national or local financial institutions;
- chairs or members of safeguarding adults boards
- legal professionals (lawyers, judges).

Analysis of their accounts of financial abuse, drawn from explorative interviews, each designed to elicit information specific to each interviewee (rather than a single interview schedule applied uniformly) was undertaken to identify commonalities and differences. Additionally, cases heard by the CoP were analysed to provide detailed illustrative material to augment – and substantiate – individual perceptions.

Themes emerging from the analysis fell into several categories – relating to the people involved, the relationship between perpetrator and victim and the type of financial abuse that most commonly occurs: abusers, victims and content of abuse.

Abusers

i) Members of the family

As noted earlier, the NHSD and CoP statistical data show that most victims of financial abuse who come into contact with the authorities (local council safeguarding teams, the OPG and the CoP) know their abusers, many of whom are close relatives and, as demonstrated in the CoP cases, hold LPAs. Of the 34 CoP cases analysed, 26 involved family members as respondents, and of these, 18 involved behaviour which constituted possible breaches of their fiduciary duties as attorneys (for detailed analysis, see Dalley et al 2017a, Dalley et al 2017b).

The abuse emerging from the CoP cases or described in the interviews covered a range of inter-generational and intra-family abuse 'styles': between generations – adult children abusing one or occasionally both parents, often having dementia; parents taking advantage of an adult child with learning disabilities; within the same generation – one sibling taking advantage of another. Co-habiting relationships, relatives by marriage (for example, sons or daughters in law), uncles/aunts, grandchildren, step-siblings could also be involved.

Some examples:

- A young man with learning disabilities living at home and looked after by parents had never been away on holiday, but his parents had regularly used his money to go on holidays abroad themselves (source: voluntary sector learning disabilities worker).
- An adult son (with LPA) who took £117,289 from his mother's account as out of pocket expenses and charged a daily rate of £400 for visiting her in her care home – and claimed entitlement to this as her sole heir (source: CoP).
- The sister of a young man, with brain injury, sought, after their mother's death, to get their father to change his will (in which he intended to leave the family house to his son to ensure his future wellbeing) to her benefit at her brother's expense (source: voluntary sector brain injury worker).
- A grandmother acting as appointee for her grandson with learning disabilities had always used his money as her own until he was moved into a care home, whereupon she expressed resentment that she had lost money to which she felt entitled (source: voluntary sector learning disabilities worker).
- A daughter and a son (both with Lasting Power of Attorney (LPA) from their mother, who now had dementia) had colluded in regularly taking large sums of money (to a value of around £20,000 each) from their mother's account (source: CoP).
- A son pressurised his father into regularly handing over sums of money to support his various failing businesses over a period of years. His sister is their

father's main carer and is attorney under an LPA. Her brother is a bully and she is afraid to challenge his actions. He claims his father has capacity to make decisions about finance (source: CoP).

ii) 'Romantic friends' and 'companions' of the victim

Sometimes individuals who have become close to the vulnerable person are suspected or are alleged to have committed financial abuse – often by family members who are concerned that their relative is being financially exploited under the guise of romantic or companionable interest. For example:

- A 'companion' arranged by a husband to assist him in caring for his wife gradually insinuated her way into his life once his wife had died and over several years alienated his family from him. She took over control of his finances; he gifted his house to her, re-wrote his will in her favour and appointed her attorney under an LPA. The family found she had taken over £150,000 from his account over a period of 5 years (source: financial institution worker, personal story).
- A young man with a large financial settlement after a traumatic brain injury in a road accident, started a relationship with a young woman with a child – which concerned his family who thought he was being exploited specifically for his money (source: voluntary sector brain injury worker).

[The examples above are far from the kind of online romance scams discussed in the mainstream criminological literature.]

iii) Friends, 'handy-men' and acquaintances

Financial abuse might also be committed by friends and acquaintances by offering services around the home informally, under the guise of being helpful, but in return for substantial, often increasing, amounts of money. This could range from small-scale errands, through small jobs turning into ever bigger ones, to major building and gardening work. Financial transactions between victim and perpetrator often developed gradually beyond the initial arrangements:

- A woman with mental health problems, living in supported accommodation, had had a 'boyfriend', a man in his fifties, for several years. He would do odd jobs for her, always charging her exorbitantly although she did not understand this was the case. Her support workers found it impossible to intervene successfully to prevent this (source: voluntary sector mental health worker).
- A gardener had become very friendly with an elderly lady over several years and persuaded her to hand over responsibility for her financial affairs to him, taking £200,000 from her in the process, but was not prosecuted (source: press report of CoP decision).

iv) 'Friends' in group/supported living

While most of the examples of financial abuse described by the research informants were located within the family, supported accommodation also proves to be a risky environment. Voluntary organisation professionals working in this field described

cases, sometimes referred to as 'mate crime' (Landman 2014), that illustrate these risks:

- An older man who had lived in supported accommodation for more than 20 years had money stolen on a regular basis from him by a co-resident. Eventually, the perpetrator was prosecuted and sent to prison after being found guilty of stealing £13,000 from him. The victim was later targeted by other abusers once they had become aware of his vulnerability (source: voluntary sector mental health worker).
- Tenants in group homes had had their bank cards intercepted by abusers who then used them to obtain cash from the banks without the banks flagging the accounts to prevent withdrawals (source: voluntary sector mental health worker).
- On occasion, tenants with dominant personalities had been found to 'persuade' more vulnerable co-tenants to 'lend' them money and then refused to pay them back. Individuals could not be evicted for being overbearing and it was difficult, care workers reported, to assemble sufficiently strong proof in specific cases for matters to be taken further (source: voluntary sector mental health worker).
- Individuals at risk from the abuse of trust by friends or acquaintances, were sometimes escorted to banks or cash points and made to draw out money to be handed over to the 'friends (source: safeguarding team member).

v) Strangers

Many studies of financial abuse relate to 'scams' by strangers – either in person at the door (Phillips 2016) or on-line/by post (http://www.thinkjessica.com/). While this research did not set out to investigate abuse of this type, safeguarding professionals who were interviewed did mention this as a significant problem. Cases often (though not invariably) involve people who are isolated or perhaps mentally frail and living on their own. This research was concerned with the abuse of people lacking capacity which meant there was a likelihood they were living in supported living, care homes or with their family rather than entirely on their own. But this does not mean they are never victims of outsider scams. The border line between capacity and lacking capacity is often not clear and in any case many people lacking capacity may continue to live alone in their own homes, with home care services delivered intermittently. Thus they will not always be living in 'protected' environments.

- Safeguarding team members described a series of cases where con men had knocked on doors, forcing older people with dementia to accept offers of work being undertaken on their property, leaving it unfinished and extorting payment, on occasions accompanying the person to the bank and waiting until money was withdrawn and handed over (source: council safeguarding team members).
- Mindful of these risks, trading standards officers reported on initiatives to set up safe neighbourhoods schemes (source: council trading standards officers).

Victims

The examples of financial abuse that the research has reported on are drawn from several sources – from cases heard by the CoP, accounts provided by people working in the various parts of the voluntary sector as well as local authority safeguarding team members.

As noted, the study was concerned specifically with the financial abuse of people assessed as lacking mental capacity. While cases dealt with by the CoP are almost always going to involve those lacking capacity, because their protection is the Court's functional purpose, local safeguarding teams intervene to protect people at risk regardless of defined mental status. It is thus worth noting that a quarter of safeguarding referrals involved people lacking capacity. As with individuals who were the subjects of safeguarding referrals, clients of voluntary sector informants, too, frequently but not invariably, assessed as lacking capacity. Victims as a whole fell into a range of categories:

- Older donors of LPAs (females in the majority) whose family members were acting for them either singly, jointly or severally, with fiduciary duties that meant they should act at all times in the best interests of the donor;
- Learning disabled young adults trying to live independently (in supported accommodation) or being 'over managed' by families (usually parents but sometimes siblings) who had undergone the transition from the role of parenting a child to the parenting of an adult;
- Individuals with mental health difficulties, living in supported accommodation, who were victims of exploitation by other tenants often behaving as aggressively or manipulatively dominant 'friends' (sometimes termed 'mate crime');
- Brain injured adults who had experienced an unexpected and traumatic transition from their previous lives to their current position, open to exploitation because of changes in their own personalities and increased vulnerabilities.

Types of abuse

The main report on the research (Dalley et al 2017a) considers the utility of establishing an overarching definition and typology of financial abuse and decided against doing so, preferring context-related definitions. The abuse described here fell into three broad contextual categories:

- Situations where the abusers (often family members) are legally in direct charge of the victim's money (as an attorney or appointee) where they spend inappropriately on a small-scale, regular basis ('dipping in') or by misappropriating large amounts ('gifting' to self or others);
- Manipulative exploitation by an abuser who can 'persuade' or force the vulnerable person to 'lend' money or be otherwise persuaded to spend money to the abuser's benefit – this also includes mate crime, offers of romance, exploitation because of the victim's gullibility;
- Deception – abuse of trust usually by a stranger or by someone who has insinuated their way into the victim's friendship circle and is in a position to

persuade the victim to give them money, or pay over the odds for goods or services, or simply not produce the gift or service.

Theoretical considerations

Social exchange theory provides a convincing framework for understanding the complexity of the misbehaviour described in many of these examples – particularly in relation to intra-family abuse. The family, rather than being a haven, a place of safety imbued with love and trust as conventionally perceived, is often a site of intergenerational stress and antagonism (Bengston and Parrott 1999) – of particular danger to those members who may lack capacity to make decisions about their own financial and material concerns. This is exemplified in the analysis of the CoP cases, reported by elsewhere (Dalley et al 2017b), which reveals vividly the extent to which bitterness, hostility and feuding can occur within families where one, or several of them, is/are misusing LPAs to their own advantage at huge cost to the vulnerable and victimised donor, a close relative.

Emerging organisational issues

Separate from the detail about the nature of the abuse emerging from the accounts of interviewees, was their perception that little could be done in many of the situations described and that satisfactory outcomes were hard to achieve. These pessimistic views fell into two categories:

i) Disenchantment with procedures in partner organisations

From time to time, interviewees in different organisations expressed jaundiced or weary views about each other's performance. Some were disenchanted with the degree of collaboration between member organisations of their local Safeguarding Adults Boards, where some members failed to attend regularly, claiming other priorities. Other interviewees, from voluntary organisations, recounted instances of referrals they had made to their local safeguarding teams which had not been taken seriously and were not followed up. The police were sometimes criticised for similar failures, with safeguarding professionals eventually assuming that it was not worth reporting incidents of abuse to the police because they anticipated no action could or would be taken.

ii) Lack of evidential proof

Safeguarding professionals expressed frustration that very few perpetrators of abuse were ever prosecuted – although hard data are hard to come by either to confirm or refute this. The police argue that the required standards of proof are rarely met to a point where the Crown Prosecution Service is able to recommend criminal prosecution (on a balance of probabilities that a conviction would result). NHSD data on case conclusions show that only 63% of concluded referrals end up being substantiated or partially substantiated and that 41% resulted in any action being taken (an unknown proportion of which would mean prosecution). There seem to be

no statistics available in relation to the outcomes of CoP cases which show whether any criminal prosecutions or civil cases in chancery followed the proceedings in the CoP. LPAs may be revoked but even in cases of substantial misappropriation of the donor's assets by an attorney or deputy, criminal prosecution seems to happen only rarely (the problem often being the lack of evidential proof to the required standard).

Reflections

While statistics on financial abuse affecting people lacking capacity are limited, those which are available show that it is a serious concern for local safeguarding authorities. The increasing volume of cases heard at the CoP, many of which instigated by the OPG, show that it is a matter of concern for those bodies too. The narratives provided in this research by professionals working in the financial abuse and related fields provide a picture of the many ways in which it is perpetrated – often hidden within families away from those officially responsible for identifying and preventing it. Even when it is identified, effective means of redress for the victim are elusive. Risks may be reported, and allegations made, but analysis of the safeguarding statistics shows that many referrals fall away during the process of investigation and do not proceed to full substantiation or prosecution – confirming the views of professionals in the field.

It is notable that many of the professionals who were interviewed could only point to a few occasions when a perpetrator had been effectively deterred and/or punished (through prosecution or by the restoration of assets taken) even though they could talk in detail about their experience of the everyday and continuing process of handling cases of abuse. Given their day-to-day working experience, professionals are often only too aware of the risks besetting potential victims, particularly those lacking mental capacity. They know that exploitation may be waiting to happen – and several of those interviewed described the long-term involvement with potential victims that was required of them to ensure their clients were adequately protected. Indeed the statistics point to some of the risk factors: location within families, frailty coupled with lack of capacity, lack of professional awareness or concern.

At a more abstract level, it raises questions about how far the contrasting principles of autonomy and personalisation on the one hand and safeguarding and protection on the other can be properly and effectively managed. Getting the balance right between determining lack of capacity, recognising the individual's right to make 'unwise decisions' when having capacity, and acting in the 'best interests' of the individual client when they lack capacity are all major challenges to those charged with their protection. Everyone interviewed saw intra-family financial abuse as a serious criminal and social problem: but at a practical level, the issue is how or even whether the level of capable guardianship and necessary adherence to the duties of attorneyship can be raised to an extent sufficient to make a difference to the chance of being abused or, if abused, assets recovered and offender prosecuted.

Conclusion

The research reported here has provided insights into the nature and scale of financial abuse within the limitations of data paucity at the official level. It has demonstrated the inherent problems, for safeguarding personnel (and researchers), of gaining access to the private domain of family behaviour. It has revealed some of the pressures experienced by professionals working with 'at risk' or 'vulnerable' adults and the challenges facing the justice system in bringing perpetrators of financial abuse to book. It has also highlighted important issues about redress and the restitution of assets for the victims of such abuse. The research, policy and safeguarding implications are significant.

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