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Vulnerable clients: Spotting elder abuse during Covid-19

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Emma Harris, senior associate in the Private Client department at Payne Hicks Beach, says during Covid-19 when the elderly are less likely to see many people, they can be more vulnerable and open to abuse. So, what is elder abuse? How do you spot it? And what can you do about it?

The term ‘Elder Abuse’ has no legal status and no clear definition.

By way of example, the Commission on Equality and Human Rights defines the term as ‘.....a single or repeated act. It may be physical, verbal or psychological. It may be an act or omission of an act or may occur when a vulnerable person is persuaded to enter into a financial or sexual transaction to which he or she has not consented or cannot consent. Abuse can occur in any relationship and result in significant harm and exploitation of the person subjected to it.’

It is, however, generally acknowledged that elder abuse can take several forms which include financial, physical, sexual, emotional and psychological.

Elder abuse can be difficult to identify and the perception of what constitutes abuse is a subjective matter.

The charity Hourglass, which champions combatting elder abuse, commissioned a poll in January which had rather surprising findings.

The poll found 1 in 3 UK residents did not believe that 'acts of domestic violence directed towards an older person' count as elder abuse and 49% of the people surveyed reported 'not attending to an older person's needs in a timely fashion' does not constitute elder abuse either.

Troublingly, the charity estimates that more than a million older people experience abuse or neglect in the UK every year.

Hourglass also asserts that assaults and domestic murders involving older people surge by as much as 25% during a festive season as the result of it being a time of financial strain and close proximity of family members. It is not difficult to see that the ramifications of Covid-19 are likely to cause the incidence of elder abuse to rise further. Potentially the risk of elder abuse has increased further during lockdown for older persons who no longer retain mental capacity, and have their affairs managed by an attorney under a Lasting or Enduring power of attorney, or a deputy under an order from the Court of Protection, as their attorney or deputy will have been unable to meet with them for several months to check on their wellbeing and that their affairs remain in order.

It is therefore vitally important that advisers acting for elderly or vulnerable clients are aware of the warning signs and what can be done to help anyone they suspect is a victim of elder abuse.

Tell-tale signs of abuse?

Abuse occurs in many settings and, as shown above, it can be difficult to identify, especially due to the narrow distinction between poor practice and abuse.

Some of the indicators of financial and physical abuse include:

- **Financial abuse:** signatures on cheques etc. which either do not resemble the true signature or have been signed after the person could no longer write or had begun to lose their mental capacity; changes in ownership of bank accounts or large withdrawals; abrupt changes to Wills; the sudden transfer of assets to another person; unusual concern by someone that an excessive amount is being spent on the person's care; lack of amenities available to the person which they ought to be able to afford; and lack of food, heating or clothing or the person mentioning an unexpected shortage of money.
- **Physical abuse:** Cuts, wounds and bruises etc. or untreated historic injuries which are yet to heal; poor skin condition and / or poor skin hygiene; loss of weight potentially also with dehydration or malnutrition; the person appearing to have either had their medication withheld from them or being the victim of overdosing; and soiled clothing.

What to do if you suspect elder abuse

First, if there is concern around breaching the older person's confidentiality or trust when considering whether to report the issue, it is worth bearing in mind the effect of section 5 of the Mental Capacity Act 2005, which allows any person who is taking action which relates to the care and treatment of a person who lacks mental capacity to be protected from liability so long as the action taken was in their best interests.

There are various options which can be explored if you suspect abuse and careful thought will need to be given as to which one or combination of options will be the best in the circumstances.

A selection of the options available are:

- Report the abuse to the local authority. All local authorities will have a team which deals with vulnerable people;
- Report the abuse to the Police if a criminal offence has potentially been committed;
- If the suspected perpetrator of the abuse is the person's attorney under a registered Lasting or Enduring Power of Attorney report the concern to the Office of the Public Guardian who will be able to send a 'Visitor' to meet with the person at risk;
- Equally, if the suspected perpetrator of the abuse is the person's Deputy under an Order from the Court of Protection, report the concern to the Office of the Public Guardian who will be able to send a 'Visitor' in these circumstances too;
- If the older person lives in a care home or nursing home, report the concern to the manager of the property and consider making a report to the Care Quality Commission who regulate all such homes;
- Contact the solicitor of the elder person to see what advice and assistance they can provide. If the family or friends of the elder person are looking to obtain legal advice about the options available, they should consider contacting a lawyer who is a member of Solicitors for the Elderly as they will have the requisite knowledge and expertise to assist effectively.

Whilst elder abuse is not something anyone wants to encounter in practice, it is perhaps more prevalent than many imagine. It is important to bear this in mind and be on the lookout for warning signs when dealing with older persons.

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