

*'Towards a good practice
Response to Financial Abuse'*

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5 Nations Seminar – Friday, 13th September 2024

Agenda

1. *It Starts with Government*
2. Making the invisible – visible
3. Definitions and recent developments - Ireland – elsewhere
4. Relationships & Proximity
5. Awareness
6. Choice, control, and consent
7. Financial Inclusion
8. *It often ends with Government.....*

Ending financial abuse: it starts with government

<https://www.each.com.au/>

'An inquiry into financial services regulatory framework in relation to financial abuse'. (136 submissions, 9 public hearings, 46 additional documents, 9 tabled documents and over 50 responses to questions 'on notice')
[https://www.aph.gov.au/Parliamentary Business/Committees/Joint/Corporations and Financial Services/FinancialAbuse](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/FinancialAbuse)

The greatest trick the devil ever pulled...

- *The **hidden** harm of financial abuse | FCA Insight*

<https://webarchive.nationalarchives.gov.uk/ukgwa/20240307173508/https://www.fca.org.uk/insight/hidden-harm-financial-abuse>

- *'Financial abuse of elderly 'rampant, but **invisible**'*

<https://www.un.org/en/desa/financial-abuse-elderly-%E2%80%98rampant-invisible%E2%80%99-says-un-expert>

- *Economic Abuse as an Invisible Form of Domestic Violence: A 'Multicountry Review Economic Abuse as an **Invisible** Form of Domestic*

<https://pubmed.ncbi.nlm.nih.gov/29587598/>

- ***Invisible abuse**: Economic abuse as a form of domestic violence*

<https://enoughforall.ca/articles/economic-abuse-domestic-violence>

- *'Exposing family financial abuse: A **silent crisis**'*

<https://crusewillwriting.co.uk/blog/4-exposing-family-financial-abuse-a-silent-crisis>

- *Financial abuse too often "**invisible**" in abusive relationships*

<https://www.citizensadvice.org.uk/cymraeg/amdanom-ni/about-us1/media/press-releases/financial-abuse-too-often-invisible-in-abusive-relationships/> (Controlling Money Controlling Lives)
2014

...was convincing the world he didn't exist.'

Definition is key

- In Ireland *Safeguarding Vulnerable Persons at Risk of Abuse National Policy and Procedures – definition of a ‘vulnerable person’ and ‘financial abuse’* (2014)
‘Financial or material abuse including theft, fraud, exploitation, pressure in connection with wills, property, inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits’

2024 – two new proposed definitions – of financial abuse (similar in nature/ slightly different in focus)

- Central Bank of Ireland – (Proposals) *Consumer Protection Code* (March 2024)

<https://www.centralbank.ie/publication/consultation-papers/cp158---consultation-paper-on-the-consumer-protection-code>

- Law Reform Commission *Regulatory Framework for Adult Safeguarding* (April 2024)

<https://www.lawreform.ie/news/the-law-reform-commission-publishes-report-on-a-regulatory-framework-for-adult-safeguarding.1141.html>

Other measures

Central Bank of Ireland ...proposed [Standards for Business](#)

A regulated financial service provider shall control and manage its affairs and systems to counter the risks to customers of financial abuse by:

- (a) putting reasonable **systems and controls** in place in the context of the provision of its financial services, to **mitigate the risk** to its customers of financial abuse;
- (b) appropriately **monitoring financial abuse trends** relevant to its customers or the sector more generally;
- (c) carrying out ongoing monitoring in respect of **potential vulnerabilities in the services and distribution channels**, and ensuring appropriate escalation processes where there is increased risk to customers of financial abuse;
- (d) **notifying customers** through clear and timely communication of any digital frauds or deception connected to its affairs, or specifically relevant to the sector in which the regulated financial services provider is operating, and of which it is aware;
- (e) **communicating the supports available** to customers, and the actions that customers can take in the event of financial abuse, directly connected to the regulated financial service provider's affairs.

Other relevant initiatives proposed by the Central Bank of Ireland

- ‘Trusted Contact Person’
- *...’establish, maintain and adhere to clear policies and procedures for its employees to report, within the regulated financial service provider, concerns that a personal consumer is at risk of financial abuse by any person’.*

Definition is key

- Law Reform Commission *Regulatory Framework for Adult Safeguarding* (April 2024) ('adult at risk' and a 'relevant person'),
 - **'Coercive exploitation' of a relevant person** - a new criminal offence proposed by the Commission ("cuckooing").
- **coercive control** - 'that a new offence of coercive control of a relevant person should be enacted in the Criminal Law (Adult Safeguarding) Bill 2024, a broader range of relationships than the offence in section 39 of the Domestic Violence Act 2018', (Recommendation 19.4) **and**
- 'that the new offence of coercive control in the Criminal Law (Adult Safeguarding) Bill 2024 should apply to all persons in *a familial, caring or cohabitating relationship with a relevant person*' (Recommendation 19.5)

Further important proposals Law Refrom Commission Ireland

- Adult Safeguarding Legislation
- Adult Safeguarding Body
- Collaboration
- Data sharing
- Reporting (including reports about financial abuse)
- Safeguarding Adult Reviews (SAR)

(note in the UK 13% SARs included financial abuse 2023

<https://www.local.gov.uk/publications/second-national-analysis-safeguarding-adult-reviews-april-2019-march-2023-executive>

– also thematic findings)

Spotlight on the relationship – ‘personally connected’

- Financial abuse is a form of domestic abuse under the Domestic Abuse Act 2021 (DAA 2021). It is referred to as ‘economic abuse’ and is defined in section 1(4) as ‘any behaviour that has a substantial adverse effect on B’s ability to:
 - (a) acquire, use or maintain money or other property, or
 - (b) obtain goods or services.
- The victim of economic abuse under the DAA 2021 must be a person who is **‘personally connected’**
- Role of the Financial Services Ombudsman in the UK ...

‘In most cases we see, the abuser is someone the complainant knows well, such as a partner, another family member, a friend, a relative or a carer.’

Why knowing the relationship between victim and perpetrator matters ...

- In the US data is gathered and analysed on 'Elder Financial Exploitation' (EFE) with certain regulated firms (banks, Money Service Businesses i.e., insurance companies, credit card companies, lenders, and casinos) required to submit 'Suspicious Activity Reports', (SAR) to the Financial Crimes Enforcement Network (Fin CEN) specifically relating to attempted or actual EFE.
- FinCEN distinguish between data on scams and data on theft.
- *'Elder scams involve the transfer of money to a stranger or imposter for a promised benefit or good that the older adult did not receive'*.
- *'Elder theft' involves the theft of an older adult's assets, funds, or income **by a trusted person.***
 - In 40% of such cases, the alleged perpetrator was an adult child, and overall, those closest to the victim — whether in terms of relationship or physical proximity were the most frequently identified perpetrators.
- https://www.fincen.gov/sites/default/files/shared/FTA_Elder_Financial_Exploitation_508Final.pdf

Relationships matter

- Having a reference in definitions to the nature of the relationship between victim and perpetrator - more than semantics.
- Informs the data collection regime – gives visibility to financial abuse
- Informs awareness raising – raising awareness of the risk of abuse by family and trusted others who are ‘proximate’ to the victim is vital
- Informs response – especially the effective implementation of initiatives like the ‘Trusted Contact Person’, Appointees (UK) or Agency arrangements (social welfare) (which rely on placing trust in a known third-party) in Ireland are implemented (and supervised).
- Increasing prevalence of issues like ‘*inheritance hoarding*’ or ‘*inheritance impatience*’, (related to longevity and perceptions of wealth status of ‘older generations’)
- ‘Unauthorised payment fraud’ – response and understanding - sharing of pins, passwords and credentials is widespread.
- Using ‘*unofficial proxies*’ to manage online ‘Unofficial Proxies: How Close Others Help Older Adults with Banking’
- [CHI '22: Proceedings of the 2022 CHI Conference on Human Factors in Computing Systems Article No.: 601, Pages 1 - 13 https://doi.org/10.1145/3491102.350184](https://doi.org/10.1145/3491102.350184)
- Unlike fraud – stopping the transaction/restitution of funds (where possible) - only one part of the response to financial abuse – person-centred – the safety of the person paramount
- ‘Ella’ was the victim of ‘Financial Abuse by a Care Worker’. – what happens to safeguard the victim after the abuse is identified is vital.... (UK SAR).

‘Ella was a 77 year old woman who was murdered in her home between 9 and 12 January 2021 by Mr. M, ..The murder followed an allegation of financial abuse and fraud committed by Mr. M against Ella while he was her care worker.’

- <https://www.devonsafeguardingadultspartnership.org.uk/about/safeguarding-adult-reviews/torbay-and-devon-sars/sar-ella/>

Choice, control and consent

- **Ireland** The Assisted Decision-Making (Capacity) Act 2015 and its amending legislation, the Assisted Decision Making (Capacity) Amendment Act 2022 (collectively referred to as the ADMC Act)
- *Code of Practice for Financial Services Providers* (not just financial institutions – applies regardless of regulatory status)
- Guiding Principles
 1. presuming every person has the capacity to make a decision, unless and until it is shown that they do not;
 2. supporting people as much as possible to make their own decisions;
 3. not assuming that a person lacks capacity on the basis of an unwise decision;
 4. only taking action where it is really necessary;
 5. where action is necessary, taking the least restrictive action on a person's rights and freedoms;
 6. giving effect to the person's will and preferences;
 7. considering and consulting the views of other people;
 8. considering how urgent the action is; and
 9. accessing and using information appropriately.

Financial Inclusion – similar risk factors for financial abuse

Top 10 factors contributing to financial exclusion among older persons reported by financial consumer protection authorities

- 1 Low digital capability
- 2 Low financial literacy
- 3 Cognitive decline
- 4 Physical decline
- 5 Social isolation
- 6 Living on a fixed income, pension or annuity
- 7 Reliance on family members
- 8 Difficulty accessing financial advice
- 9 Lack of financial products for older persons
- 10 Reliance on financial professionals

Data Source : G20/OECD Task Force on Financial Consumer Protection/FinCoNet questionnaire on financial consumer protection and aging (2019).

Choice, Control and Consent

- Rights-based – UNCRPD Article 12 (5)
- Financial literacy – Myth of ‘next of kin’, ‘historical assumptions’,
- Education for the person providing support (where support is warranted) see for example US.
- [Guides for managing someone else’s money | Consumer Financial Protection Bureau \(consumerfinance.gov\)](#)
- Access to a bank account – (On 4 September the FCA published an update on its work in the area of UK Payment Accounts Access and Closures – highlighted importance of ***‘assuming capacity’***)
- <https://www.fca.org.uk/publications/corporate-documents/uk-payment-accounts-access-and-closures-update>
- Use of ***‘Unofficial proxies’*** and ***‘informal workarounds’*** to manage money online (studied in various jurisdictions and contexts - by the FCA - 20% share credentials and Money and Mental Health Org 49%) - not studied in–depth in Ireland – but very prevalent in cases of financial abuse – (breach of T&Cs)
- <https://www.moneyandmentalhealth.org/publications/thirdpartyaccess/>
- Third-party support mechanisms must be improved (based on the presumption of capacity - flexible, safe, nuanced, digitalised).
- Digital/cash narratives and discourses – need to consider financial abuse, not just fraud risk

G20 Fukuoka Policy Priorities Aging and Financial Inclusion

1. Use data and evidence Use various sources of data and evidence to show which policies are working and identify what else needs to be done
2. Strengthen digital and financial literacy - Aim to provide everyone with practical skills and knowledge to manage in a changing financial landscape
3. Customise - address the diverse needs of older people. Create products and services that are tailored to the range of needs of older people
4. Support lifetime financial planning - Develop programs and products to encourage long-term plans Innovate - harness inclusive technologies
5. Make the most of technologies in developing financial products, protecting consumers and delivering financial education
6. Protect - tackle financial abuse and fraud of older people Identify problems quickly and use multi-pronged approaches to prevent older people from becoming victims of financial abuse or fraud
7. Encourage stakeholder engagement - a multi-sectoral approach
8. Target key audiences - address vulnerabilities. **Consider the needs of groups who may be vulnerable or underserved**

<https://www.gpfi.org/sites/gpfi/files/documents/G20%20Fukuoka%20Policy%20Priorities%20on%20Aging%20and%20Financial%20Inclusion.pdf>

It also ends with Government....

- Emphasis in much of the literature is on the role of banks and financial institutions
- But –it '*Starts with Government*' – recognition, legislation, regulation, policy, resourcing, prioritisation – along with other types of fraud.
- It also – very often – '*ends with Government*' – costs of financial abuse – borne by the individual and the exchequer – not quantified but commensurate, in many cases, with the lifetime loss of money, benefits or assets to the individual + the additional public health harms and social welfare costs.