

National Centre for the Protection of Older
People Seminar
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Financial abuse: The legal and regulatory gaps

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Key Points of Study

- Financial abuse was the most prominent type of abuse identified in the study
- People in poor health were likely to be under represented in the prevalence study
- Most significant risk factors to emerge were related to both perceived and measured poor or below average health
- Most complex households where older person lived with adult child or other family
- Mean age of study population 74 years – financial abuse increased for both men and women in the over 80 years age group

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Some Conclusions of Study

- Response needs to be multifaceted targeting early risk factors with an emphasis on **prevention** and later risk factors with a focus on resolving abuse
- Inadequate regulatory frameworks and barriers to effective inter-agency working need to be addressed
- To effectively combat and prevent an escalation in the prevalence of elder abuse and neglect there needs to be strong leadership and dynamism from government, state agencies, academic institutions, financial and legal organisations, and older people themselves and the organisations that represent them

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Income levels

Key Points:

Just over 20% of the study population lived on basic state pension for a single person and a further 51% lived on the minimum state pension for a couple

There was a high level of house ownership among both men and women 91%

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Types of financial abuse

Forced to give money or property	44%
Denied access to money or property	40%
Stolen money or possessions	33%
Forced/misled to sign over ownership of home/property	26%
Not contributing to household expenses	26%
Pressurised (but did not succeed) into signing over home ownership or giving money	22%
Forged signature	11%
Forced to change will	7%
Misuse of Power of Attorney	4%

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Perpetrators of Abuse

The most frequently identified group of perpetrators of abuse or neglect in the past 12 months and within a relationship of trust were:

Adult Children	50%	(Interpersonal and financial)
Other relatives	24%	(Financial)
Spouses	20%	(Interpersonal)

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State Pension

Department of Social Protection is responsible for about 26 million payments annually to some 500,000 older people over the age of 65 years

Balance facilitate payments and minimise red tape

Pensions are paid directly in a bank/post office account
Pensions are collected by person or agent

Arrangements with regard to accounts
Arrangements on the appointment of agents

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Law of Agency

- Can only do what principal authorises
- Must keep property of principal separate
- Must account fully for property of principal
- When is agency terminated?

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State Pension

- Social Welfare Consolidation Act 2005
 - S244 – regulations for enabling a person to nominate another person to receive that benefit
 - or where circumstances so warrant the Minister can appoint a person to receive and deal with benefit on behalf of claimant
 - S251 – Offences
- Social Welfare (Consolidated Claims, Payments and Control (Amendment)(No.6)(Nominated Persons) Regulations 2009
 - Par202A *Obligations of appointed person*

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Agency arrangements

- Informal arrangement (3 weeks)
- Agency type 1 – where person has capacity
- Agency type 2 – where person does not have capacity

- Contractual arrangement with third party

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What is required – State Pension

- Determined effort to tackle abuse – robust risk management
- Taking responsibility to have procedures in place to prevent abuse
- Review of agency procedures
- Education and training both internal to state department itself but also to the public in general
- Look at offences and sanctions –summary

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Enduring Powers of Attorney

Section 5(2) provides: *The Minister may make provision by regulation in relation to any of the following matters.....*

(e) the keeping of accounts by the attorney in relation to the management and disposal of the donor's property

SI 196 of 1996 'An attorneyshall keep adequate accounts.....and in particular, of any expenditure to meet the needs of donor or to make gifts authorised'

When an EPA is registered

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What is required - EPAs

- Risk management (Registrar/Public Guardian)
- Information to attorney at time of registration
 - Keep property separate
 - Fully account for assets and income
 - Keep annual accounts
- Attorney sign declaration of understanding
- Policing by financial institutions

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Transfer of property Legal organisations

- Conflict of interest
- Law Society has not an absolute rule that cannot act on both sides in voluntary transactions
- Understanding of independent advice
 - *Kenwood v Adams*
- Make full enquiries about client circumstances
 - *Carroll v Carroll*
- Wills

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What is required

- Law Society must have a clear policy
- Clear professional protocols
- Education and Training
 - Profession
 - Public
- Confidentiality

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Financial organisations
Transfer/Dealing with property

Bourke v O'Donnell and Bank of Ireland – HC 2010
Joint Bank Accounts – contractual arrangements

Movement on accounts
Financial products

Accounts operated under an EPA

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What is required

Consumer Protection Code to include definition of *vulnerable consumer* to include consent procedures
Detailed facts sheets for explanation to consumer
Joint accounts – detailed information as to options
EPA Accounts – repeating information obtained at registration
Detailed training at different level for escalation of cases and how to deal with problems
Industry wide approach
Inter agency relationships

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Other

- Credit Unions
- Post Office

- Stock Brokers
- Investment Managers
- Investment Intermediaries

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Capacity/Vulnerability

Need for modern capacity legislation

- Need to respect the right of a person to dignity, autonomy, private property
- Capacity means the ability to understand the nature and consequences of a decision in the context of available choices
- Public Guardian – codes of practice – wide role
- Offence of ill-treatment and neglect – limited

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Trust and Trustee Bill

Abolish or restrict the common law

Presumption of advancement

Husband to Wife

Father to children (minor and adult)

Clear evidence of intention to benefit

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Other legislation

Information

Whistle blowing

Codes/Protocols

Multi-agency approach

Training and Education

All

Can Do and Will do

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