

APPENDIX F

Justices of the Peace articles

Be alert for Elder Abuse

by

Tim Martin, Seniors Task Force, Queensland Police Service

Maya Zetlin and Les Jackson, Elder Abuse Prevention Unit

Older people are as susceptible to abuse as anyone else in the community, and may be more so depending on their circumstances.

Elder abuse is any behaviour within a relationship of trust that harms an older person.

It can happen to anyone, regardless of their financial, social, educational or ethnic background.

It is estimated about 25,000 older people are abused each year in Queensland by someone they trust, so it is imperative that Justices of the Peace look for signs of elder abuse when performing their duties.

Recognition

Elder abuse has only recently been recognised as a community issue, and for a number of reasons is not often heard about or kept behind closed doors.

Those who are suffering mistreatment may be isolated and therefore don't have contact with people who they could talk to about the mistreatment. Or the victim's contact may be limited to people who aren't in a position to recognise that abuse is occurring or aren't aware of the services that can assist.

The victim may be ashamed to admit that someone close to them is abusing them and might blame themselves for what is happening. The fear that they will get their son or daughter in trouble with the law is also an inhibiting factor, while pressure from other family members to not report abuse has also been noted.

The victim might think that abuse doesn't happen to others and, again may be embarrassed to talk to another person. And there is always the possibility that the victim might be afraid of what will happen if they tell others of their situation – the abuse may become worse because the abuser has been exposed.

Types of abuse

Generally, people consider abuse or mistreatment to be physical, however many types of abuse exist that can be inflicted upon a person, particularly if the person lacks confidence or is frail.

In addition to physical abuse (such as hitting, slapping, or restraining, and may include over-medicating), there are a number of other ways in which older people can be mistreated.

Financial mistreatment, for example, is the illegal or improper use of a person's money or possessions. It also includes activities such as the misuse of enduring powers of attorney, forced or coerced changes to wills or the gifting of assets. Reneging on informal family agreements is also becoming more common.

Recent studies show that around half of all elder abuse involves some form of financial exploitation, in which substantial amounts of money or the family home are often involved.

Psychological mistreatment is another form of abuse and can be inflicted by causing the person to feel fear or shame, or by intimidating, humiliating or threatening the person. Some forms include threats of institutionalisation ("I'm going to put you in a nursing home") or emotional blackmail ("I won't bring your grandchildren to visit you again unless...").

Sexual abuse may take the form of sexually harassing a person, assaulting them or even embarrassing them through sexual or inappropriate comments. This can include activities like viewing pornographic or sexually explicit movies in front of an older person to embarrass them, or similarly by playing music with offensive lyrics.

Senior members of the community may also be subjected to social mistreatment by preventing them having social contact with family members or friends. Isolating an older person is often employed as a tactic to financially exploit them.

Abuse can also include neglect where family members or carers may intentionally or unintentionally fail to provide an older person with the necessities of life or appropriate care.

Contributors

As mentioned earlier, abuse is prevalent in today's communities and a number of factors can contribute to it developing or occurring.

The people an elderly person has contact with may be restricted by language and cultural barriers, which limits who they can get information from and, therefore, their knowledge and access to support services, networks or organisations.

Attitudes towards older people within the community can also play a part in the treatment of seniors by their family and other members of the community. An increasingly common attitude is that the adult children are entitled to an 'early inheritance' and will put pressure on their parents to do this.

There is also family commitment where a relative or relatives feel a duty to provide for their ageing parents and underestimate the disruption to their lives that this will create. Setting up a 'granny-flat' for the parent/s may have been for the best of motives but can go terribly wrong if relationships break down. Both parties are locked into living and fighting together as the parent's money is usually tied up in the flat which will be difficult to sell separately.

Also, a carer may refuse to accept outside help, which is often seen in situations of older men caring for their wives. They may see accepting help as an admission of their failure to provide for her or as accepting charity. While this approach may be admirable, it could be preventing the older person from receiving specialist care or the attention they need. It is also likely to place additional stress on the carer trying to provide proper care, as well as the older person.

Other social factors that contribute to elder abuse are the widening cultural gap between the generations in the family, creating a lack of understanding and communication issues between grandparents and younger relatives.

Personal factors can also result in older people being mistreated. Should an older person's carer or adult child who is living with them have a drug or alcohol dependency, for example, there is the potential for physical, psychological and financial abuse to occur, and it is unlikely that the victim would receive proper care.

Mental health issues, broken marriages, business failures and other life events may see an adult returning home to their parents who end up having to provide for a dependant 40+ year old child again. These situations can easily end up in abusive situations, with the child exploiting the parent's role to help a family member in trouble.

The health of the older person can be another contributor to abuse. Carers can experience significant stress if the older person has mobility difficulties or is suffering from dementia.

Should a family member or carer be financially dependent on an older person, there is the potential for conflict to occur, which may manifest itself in abuse.

What to do

Everyone has the right to the use of services and community resources. While some people may see these government and non-government organisations as charities, they are not. Many of these services exist to assist older people to remain living at home and to retain a quality lifestyle.

And it is not just the older people to which these services are available, as many organisations exist to support carers as well.

There are a number of ways older people and their carers can guard against or overcome abusive circumstances.

Participation of older people in social and educational activities can benefit themselves, as well as their family and carers. Providing the opportunity for social interaction can reduce stress, anger and conflict.

If an older person is experiencing some form of abuse, they can talk it over with someone they trust, such as their doctor. Also, developing a network of people to trust and talk to about anything can help a person identify abuse and abuse and provide support should it occur.

While some older people may believe the best way to provide for their future is to live with their family, this is not always the best option, and may place additional stresses on the relationship. If that occurs, a separation might be the best way to improve family relationships.

Legal advice can be important if older people are signing documents that transfer possessions, financial control or decision-making to another person. At the very least, decisions should not be made until the older person has received and understands a proper explanation of what is occurring and its ramifications.

If the abuse is physical and the person is in immediate danger, the best advice is to call police, and like anyone else, victims of elder abuse can, in many situations, apply for a protection order at no cost from the Magistrates Court under the Domestic and Family Violence Protection Act 1989 to protect them against future violence or abuse.

Help and information

Several organisations assist older people suffering any form of abuse:

- Office of the Adult Guardian, 1300 653 187
Helps people with impaired decision-making capacity by acting as their decision-maker in certain circumstances, being an advocate, and giving advice about decision-making on behalf of adults with impaired capacity.
The Office also investigates allegations of physical and financial neglect or abuse.
- Elder Abuse Prevention Unit, 1300 651 192 (9am-5pm, Monday-Friday for cost of a local call). Provides a statewide confidential telephone information, support and referral service for anyone experiencing abuse or witnessing the abuse of an older person.
- DV Connect, Women's Line: 1800 811 811, Men's Line: 1800 600 636
A 24-hour domestic violence contact for men and women.
- Victims Counselling and Support Service, 1300 139 703 (24 hour)
Provides a range of free support services to victims of crime and their families.
- Seniors Enquiry Line, 1300 135 500
Provides information and referrals for seniors on a range of issues.
- Crime Stoppers, 1800 333 000 (24 hour)
Provides a hotline for members of the public to provide anonymous information about criminal activity.

Key areas for JPs to watch

by

Mark Phillips, Office of the Adult Guardian

Maya Zetlin and Les Jackson, Elder Abuse Prevention Unit

Elder abuse is commonly recognised as physical harm to an older person, but it is more than that and comes in various forms. Abuse can be inflicted financially, psychologically, socially, sexually and through intentional or unintentional neglect.

Two key areas that Justices need to be aware of are 'undue influence' and 'enduring documents'.

Undue Influence

A significant concern in the area of elder abuse is the issue of an adult being subjected to coercive undue influence to make decisions that would favour a family member or other party.

Examples of undue influence being exerted can be subtle or extreme depending upon the circumstances. Extreme examples include the demanding of a parent to sign a transfer of the parent's property to a son or daughter under the threat of either not visiting the parent or placing them in a nursing home.

When witnessing enduring powers of attorney and advanced health directives, Justices are to be mindful that "the ability to make decisions freely and voluntarily" is part of the criteria defining decision making capacity to complete these documents.

The witness to these documents is not just witnessing the signature of the adult but certifies that at the time of the document being signed, the person appeared to have decision making capacity.

When pressure or coercion is applied to a person whose state of mind deprives them of the ability to resist, then the decision ceases to be theirs, and is really the decision of the person applying that power or exercising control.

If Justices are confronted with a situation where they are not satisfied that the person has capacity, they should decline to witness the document and suggest to the parties involved that professional advice be obtained as to the person's capacity.

Justices with concerns about a circumstance can contact the listed agencies to discuss their particular concerns.

Some potential indicators of undue influence for Justices may include but are not limited to:

- The adult totally relying on another party at the discussion to provide information or the reasons for a course of action;
- The adult relying on written material in another's handwriting to give details of the matter to the witness;
- The adult not displaying a sufficient level of understanding of the written statement they are relying upon to advise of the matter;
- Inadvertent disclosures by the adult during the course of conversation with the witness;
- The person stating they want to transfer their only significant asset that they rely upon for income to a family member or other party; and
- The adult being isolated from previous social contacts and displaying total reliance on one party.

Enduring documents

Each Enduring Power of Attorney must be witnessed by a Justice of the Peace, a commissioner for declarations, a lawyer or a notary public.

One of the most important tasks a witness has in this area is assessing the principal's capacity to undertake this legal procedure. Capacity is such a 'grey' area that the Office of the Adult Guardian provides guidelines for witnesses of these documents to determining capacity.

Misuse of attorney documents is reasonably common in financial abuse situations.

Also, recent Queensland research identifies that attorney's often engage in 'risky' behaviour with the principal's money and assets, either inadvertently because they are not aware of their responsibilities or they are treating the person's finances as if it were their own.

If Justices suspect a person is abusing or exploiting someone who is about to become the principal, or is currently the principal, to an Enduring Power of Attorney, advice is available from the Office of the Adult Guardian.