

# Crime and older people

**AGE**  
*Concern*

Gillian Connor of Age Concern raises some issues for prosecutors and magistrates to consider



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**F**ear of crime among older people is often dismissed as irrational. After all, older people are pretty unlikely to be a victim of crime.

However, a new draft Crown Prosecution Service (CPS) policy statement, *Crimes Against the Older Person*, points out that older people are very likely to be targeted for specific crimes. Distraction burglary and rogue trading, for example, are both crimes that are under-reported and can have crippling effects on the duped, and often embarrassed, older person. Then there is the hidden abuse of older people. A 2007 national survey revealed that 2.6% of older people aged 66 and above living in private households – not care homes – reported recent mistreatment involving a family member, close friend or care worker. That's around 227,000 people neglected or abused in a year.

The draft statement, consultation on which ended in January, is an important step for the CPS. For the first time, prosecutors will be advised to be proactive in identifying crimes that target older people and will be drawing the court's attention to age and perceived vulnerability as an aggravating factor. The stated aim is that older victims can expect more support in the form of 'special measures'. The prosecution will advise the court if there is an aggravating element to the

offence relating to the victim's age or vulnerability, with a possibility that courts may take into account an older person's experience of the crime at the sentencing stage of the case.

This is of course part and parcel of the CPS review of their equalities policies, at a time when age is beginning to be viewed by public bodies as a legitimate equal opportunities issue along with the more established dimensions: race, gender and disability. But the CPS has rightly identified that older people have specific 'reporting and supporting' issues, as do potential 'whistle-blowers', whether friends or care professionals to older people. The CPS has also signalled to Age Concern that cases are not going to them because of assessments made about the reliability of older witnesses and victims.

The CPS has come up with five areas of crime that they plan to target:

- abuse or neglect where there is a relationship and an expectation of trust
- abuse or neglect in an institution
- crimes which target older people because they are perceived as vulnerable or potentially easy to steal from
- crimes which are not initially related to older age but may later become so (for example, where a burglar exploits the situation on discovering that the householder is an older person)
- crimes which are in part, or wholly motivated by hostility based on age, or perceived age (for example, harassment, assault or threats by neighbours).

## IDENTIFYING OLDER AND VULNERABLE PEOPLE

So what is meant by older persons? Older people are an enormously diverse set and the CPS has rightly avoided being prescriptive. But for initial police recording and identification purposes it has suggested victims aged 65 plus where the crime falls into one of the five categories above.

In writing this article I consulted a magistrate, aged 67, whom I know. 'I certainly wouldn't consider myself "vulnerable"! he said. He certainly doesn't look like a 'vulnerable' older person – but then neither do many older people aged 65 or more. But what about those who look older than they actually are and those who are more vulnerable than their appearance or age would suggest? How will the police identify these, and in good time? There was a shocking recent report of a 60-year-old woman who was badly

beaten by a drunken local who dismissed her afterwards to police as 'just an old cow'. Would this have been registered under the proposed monitoring system? Did the older victim describe herself as vulnerable, or ascribe her attacker's motives down to ageism or cowardice in a victim personal statement, if she made one? Indeed, when is age and/or perceived vulnerability an aggravating factor?

These are not particularly new issues of course – magistrates exercise this form of judgment all the time in considering aggravating and mitigating circumstances. However, there are pointers from hate crime recording and the policy realm that might inform these considerations. For example, the Home Office defines hate crime as 'any incident, which constitutes a criminal offence, which is perceived by the victim or any other person as being motivated by prejudice or hate'. Age Concern considers certain crimes against older people as a form of hate crime. More generally, the principle of 'perception by the victim and others' could be applied to any crime involving potentially older or vulnerable people.

As for assessing vulnerability, Age Concern prefers the concept of 'social vulnerability'. By this, we mean that any assessment must recognise that the situation that a person finds themselves in is as likely to render them as 'vulnerable' as their own innate characteristics. Being in a trusting relationship is just as relevant as living in a care home, for example. The CPS statement attempts to address both aspects but does not explicitly mention older people who are 'befriended' by strangers and are then taken advantage of.

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### POSSIBLE OMISSIONS IN THE CPS STATEMENT

The concept of social vulnerability is particularly relevant when the crime involves an older victim with limited capacity, caused by dementia for example – or the increasing number of older people with learning disabilities. It is important that the CPS takes full advantage of the new criminal offences under s44 Mental Capacity Act 2005 (ill treatment or neglect of a person who lacks capacity) and s6 Fraud Act 2006 (fraud by abuse of position). The flip side of course is the possibility of doubts over the reliability of accusations in these circumstances and the need to protect defendants, who may be older themselves, against ill-founded claims.

The CPS draft statement naturally restricts itself to criminal matters but there are clearly instances where criminal law overlaps with civil law. For example, 'undue influence' used to obtain contracts and gifts, for example, and instances where money has been appropriated but not necessarily spent. These are all examples of elder abuse. Age Concern has encountered examples of long-lost 'nearest and dearest' appearing and seeking to overturn the wishes of relatives who have been much closer to the vulnerable person, often with an apparent

aim of financial gain. We would also view corporate neglect as a form of abuse, rather than an issue of good practice. It is important that the CPS works closely with local adult protection teams and the Office of the Public Guardian – and magistrates should also be aware of the systems in place for protecting vulnerable adults.

Legislation that protects older and vulnerable adults, as consumers, is somewhat lacking. However, a European Union Directive on Unfair Commercial Practices is due to come into force in spring 2008. This will involve revising some existing consumer legislation. Age Concern hopes that the implementation of the Directive will give a greater opportunity to protect consumers who are vulnerable, for example, to excessive overcharging for routine home improvements. Legislation to protect vulnerable adults also appears to be favoured by some ministers.

### LIKELY IMPACT OF THE CPS STATEMENT

The CPS statement will not have a direct impact on magistrates, and many magistrates may well be considering these issues as good practice. But presented with a case involving an older person, there may be more to the case than initially meets the eye.

Many magistrates will not actually see many victims and so may not be in a position to make these delicate and sometimes complex judgment calls themselves, especially if there is no victim personal statement. In any case, Age Concern's experience is that vulnerable older people tend to downplay the impact of disturbing events on them. To some extent police and possibly social services may need to draw more subtle issues to the court's attention.

Elder abuse involving a close family member involves some not dissimilar issues to domestic abuse and there may be lessons to draw from this when considering bail conditions or considering whether to remand the accused in custody.

The ultimate motive for offending may not always be obvious. Pre-sentence reports, where age and perceived vulnerability are aggravating factors, may help to highlight appropriate community schemes or restorative justice approaches that would assist perpetrators with worrying attitudes towards older and vulnerable people.

And finally, what if the perpetrator is not found guilty but magistrates have concerns about the welfare of the older person? The CPS is interested in fall-back options when prosecutions fall through and this is something magistrates may wish to consider too.

Certain types of abuse against older people seem to be tolerated and not recognised for what they are: ageist, bullying, exploitative and possibly criminal acts against older people. More assertive prosecution is required to deal with this, perhaps backed by legislative and sentencing reforms, together with review of processes within the criminal justice system. But ultimately a re-examination is needed of how older people, especially the most vulnerable, are regarded in our communities.

Gillian Connor is policy adviser with Age Concern.