SKILLS MODULES

3 OF 7

MODULE 3
Detection

1 2 3 4 5

BEFORE WE BEGIN

REFLECTION

Before we begin this module take a moment to think about this statement from Ejaz (2017):

> *A study of elder abuse in New York state suggests that the incidence rate of all types of elder abuse was nearly 24 times higher than what is reported to social services, law enforcement agencies, and legal authorities. Financial abuse was the most commonly self-reported type of abuse and the incidence was 44 times higher than what was reported to authorities (Lachs & Berman, 2011). Reasons for not reporting are diverse, and include concerns about client confidentiality, time constraints in clinical practice, fear of reprisal by perpetrators, insufficient confidence in the agency receiving the report, and belief that reporting will not make any positive difference in the family caregiving situation*

Let that sink in …

44 times higher than reported …

OVERVIEW

DETECTION

Developing skills to **detect** financial abuse (or the risk of financial abuse) builds on the key areas of knowledge. It flows from understanding the context and nature of financial abuse, industry examples and risks and vulnerabilities for both victims and perpetrators.

It also builds on key skills in working with older persons, assessing capacity and working with particular groups.

Differentiating economic abuse from financial abuse may be important in terms of referrals and opportunities for intervention and remediation.

In some cases detection is very difficult. For example, elder abuse detection among cognitively impaired remains a great challenge (Beach, 2016).

LEARNING OUTCOMES

include gaining the skill to bring learned knowledge together to detect financial abuse, where older persons present who may be at risk or where financial abuse is already happening.

DETECTING FINANCIAL ABUSE

Financial abuse is hard to detect.

Barriers to detection include complexity, awareness, definitional and recognition factors (Aneztberger, 2001). A key challenge is gaining access to the private domain of family behaviour (Dalley, 2017). Additionally, detection can be hard because financial abuse can be perpetrated physically remote from the older person and without their knowledge (Phelan, 2017).

Additionally, the onset of financial abuse is often **gradual and insidious** and, lacking oversight, subtle deception may mimic legitimate transactions and escalate over time. Differentiating abuse from **legitimate transactions** is challenging in that there may be indications of consent by the older person, for example, a signed document and an apparent gift, when in fact the perpetrator has used psychological manipulation or misrepresentation (Wilber & Reynolds, 1996). Cognitive impairment, sensory impairment, or lack of financial sophistication may also cloud the distinction between willing assent and abuse (Conrad, 2010).

DETECTING FINANCIAL ABUSE

Another complicating factor is how we target individuals for protection from financial abuse. Three (3) general approaches are employed.

1. The Age Proxy Approach that targets all individuals who have reached a given age are protected.
2. The Vulnerability Approach that targets all vulnerable or incapacitated adults regardless of age.
3. Hybrid Approach that targets vulnerable or incapacitated adults of any age and all adults over a certain age. (Dessin, 2000; Roby and Sullivan, 2000).

The first approach, however, has been criticised for perpetuating the unfounded stereotype that all older persons are vulnerable and in need of protection (Roby and Sullivan, 2000 in Bonnie, 2003). The last two (2) approaches can make it difficult for researchers to distinguish reports of elder abuse from reports of vulnerable adults in general (Coker and Little, 1997).

Presuming vulnerability is also potentially inconsistent with Queensland's approach to the presumption of capacity whatever chronological age. (See Assessing Capacity)

RECOGNISING BEHAVIOURAL TRIGGERS

Lichtenberg (2016) suggests some behavioural triggers that should be recognised by advisers:

- Getting lost coming to or becoming disoriented inside the adviser's offices
- Requiring transportation compared to previously being independent
- Family or others accompanying older adult to the office when they previously did not
- Repeated questions during interaction
- Difficulty following directions, in emails, phone calls or in person
- Older person is unable to recall financial recommendations from prior visit
- Older person is unable to give good recent history of financial decisions/dealings
- Trouble with handling paperwork
- Older person has no knowledge of a newly issued account, ATM, debit or credit card
- Sudden appearance of previously uninvolved relatives claiming their rights to an older person's affairs and possessions
- Large withdrawals from a previously inactive checking or credit account or a new joint account
- Account use shortly after the addition of a new authorised signatory

INDUSTRY EXAMPLE

RED FLAGS

Industry wide bodies have identified a range of "red flags" that warnings of financial abuse. The Australian Financial Complaints Authority (AFCA), the Financial Ombudsman Service has outlined industry "red flags" for financial abuse.

These red flags include:

- Where an older person engages in financial activity that is unusual, erratic or uncharacteristic
- Where an older person is accompanied by a new acquaintance to make a large or unusual withdrawal of cash
- Where an older person is accompanied by a family member or other person who seems to coerce them into making transactions
- Transactions by a caregiver that do not seem to be in the interests of the customer, for example a holiday or a car

RED FLAGS

- Where an older person is not allowed to speak for themselves, or the other party does all the talking (particularly in combination with either of the two above situations)
- Where an older person starts to appear fearful (particularly of the person accompanying them) or withdrawn
- Where withdrawal slips are signed by the older person but the rest of the slip is filled out in different hand writing presented by a third party
- Adding a person to the account followed by the balance being transferred out
- A third party has large withdrawals or transfers made on behalf of the older person without prior direct contact from them
- Where an older person doesn't understand or isn't aware of recently completed transactions

RED FLAGS

- Where an older person gives implausible explanations about or appear confused about what they are doing with their money
- Where an older person suddenly registers for internet banking when prior financial activity has been branch based and there has been no preliminary contact with the FSP
- Where an older person has unpaid bills that they should be able to afford to pay – e.g. complain of having no heating despite the fact that they can afford to have it, or that they are being evicted and
- Where an older person is concerned about missing funds or financial service related documents
- Where an older person indicates that mail, such as account statements, is no longer being delivered to their home.

INDUSTRY EXAMPLE

AFCA'S APPROACH TO FINANCIAL ABUSE

Advisers need to understand AFCA's policy approach to financial abuse. AFCA's approach was summarised in **Determination 483486**:

> *FOS's view is that financial abuse occurs where a third party uses the funds or assets of an elderly person to the detriment of the elderly person. The misuse can be by illegal conduct (such as fraud or forgery) or by abusing the incapacity, trust or confidence of the vulnerable elderly person.*
>
> *Vulnerability combined with a detrimental impact on the elderly person can help to identify improper conduct. While vulnerability can be related to incapacity, it can also be due to dependence on, or trust in, a third party.*
>
> *It is important to distinguish potential financial abuse from what is actually an informed decision made by an elderly person with capacity to make a decision, who makes it free from any improper or influence from a third party.*

AFCA'S APPROACH TO FINANCIAL ABUSE

> *Where a financial services provider suspects elder abuse or some form of undue influence is taking place (which I have not found here), then it should take all steps to question the customer away from other parties and ensure the customer is acting of their own free will.*
>
> *Where a financial services provider suspects the real possibility of fraud or a criminal conduct (which I have not found here), then it should consider refusing the transaction and alerting the relevant authorities.*

AFCA's approach can lead to a number of different outcomes for the adviser, their employer and the older person or their representative in the complaint (including executor and administrator)

AFCA's approach can be found in many determinations

INDUSTRY EXAMPLE

APPLYING AFCA'S APPROACH-DETERMINATION 427752

The Facts:

- The Applicant held a joint savings account with the Financial Services Provider (FSP). The account-holders were aged 90 and 94 respectively. They lived in separate nursing homes, although they remained a couple.
- In 2014 the Applicant and the joint account holder signed a power of attorney providing the Applicant's daughter and the joint account holder's son with authority to access online banking to view account statements only. On 2 April 2015, the Applicant's daughter telephoned the FSP to report suspected unauthorised transactions on the account by the joint account holder's son.
- Five days later, the joint account holder's son took the joint account holder in his wheelchair into a branch of the FSP. The joint account holder closed the account and transferred the funds to an account solely in his name without the Applicant's knowledge. The account closing balance was $139,448.93 (Funds).

INDUSTRY EXAMPLE

AFCA DETERMINATION 427752

The Red Flags:

- The circumstances in this dispute raised a number of 'red flags' to the FSP regarding the need for joint mandate for joint bank accounts and potential elder abuse. At the time of the disputed transaction, the FSP failed to exercise appropriate care in response to the 'red flags' and allowed all of the Funds to be transferred from the account. The FSP did not comply with good industry practice to protect the Applicant from potential financial abuse.
- A financial services provider should be in a position to recognise signs that a customer may be under the undue influence of another party, including where the customer is elderly or vulnerable and conducting an unusual transaction in the presence of another person.
- In 2007, FOS issued Bulletin 56 setting out good industry practice in relation to the potential financial abuse of the elderly. The Australian Bankers Association (ABA) published industry guidelines in June 2013 to provide guidance for bankers to protect customers from potential financial abuse. The guidelines set out warning signs that could indicate a customer is experiencing financial abuse.

AFCA DETERMINATION 427752

The warning signs include when a customer (or their representative) expresses concern about missing funds, or makes an unusual transaction.

An unusual transaction would include one where most or all of the funds in a joint bank account are transferred away from the control of one of the account holders. In 2008 AFCA issued Bulletin 58 setting out good industry practice in relation to mandate on joint accounts.

It was AFCA's view that both account holders should consent to a transaction which would in effect close the account or remove all of the funds in the account from the control of one of the account holders.

CPA AUSTRALIA'S APPROACH

The CPA Australia notes that accountants have legal and professional accountability for detecting abuse:

> *An accountant can be in a unique position due to their professional training to recognise and understand where financial abuse may exist – either potentially or actually. This professional understanding lifts the level of responsibility of the accountant above that of the "man in the street" and in the event that a case of abuse results in court action it may be that the accountant may have to defend their actions or lack of actions against charges of negligence.*
>
> *If a finance professional or institution knowingly assists a fiduciary, such as a trustee or the holder of a power of attorney, to commit a breach of fiduciary duty such as the misappropriation or the misuse of funds, he or she may be liable for loss resulting from the breach, even though the professional or institution received no benefit from the breach, and even though it was not fraudulent or dishonest itself. This is known as liability under the second limb of* Barnes v Addy *(PSD) – assisting with knowledge in a breach of duty by a fiduciary. The accountant's professional duty to exercise reasonable care and skill may, in some circumstances, include the obligation to enquire as to whether a valid mandate exists. This is so, despite the potential for a conflict between the professional's duty to carry out their client's instructions and the responsibility to ensure that there is a valid mandate for those instructions.*

CPA AUSTRALIA'S APPROACH

The CPA Australia notes accountants are expected to take proactive steps to avoid abuse:

> *Accountants, as trusted professionals, are required to act in accordance with the highest professional and ethical standards.*
>
> *A fundamental principle is that the accountant must be objective and "not allow bias, conflicts of interest, or undue influence of others to override professional or business judgements". Another is that accountants must exercise professional competence and due care. It would be contrary to those principles for an accountant to knowingly or negligently facilitate arrangements which expose an older person to financial abuse and it would be ethically and morally unacceptable to "turn a blind eye" to abuse once suspected.*

The professional must not merely follow instructions; he or she must ensure that the client is properly advised , even where they have not actively sought advice.

FINANCIAL ABUSE BY INDUSTRY

As far back as the Older People and the Law Report of the federal Parliament, **financial advisers** have been identified as acting inappropriately towards older persons.

Examples given in that report included:

- Inadequate financial planning for retirement and avoiding high risk or illegal investment strategies which may result in significant, irrecoverable financial losses
- Equity Release Products and
- Scams, such as cold calling and unsolicited share offers, to which a significant number of older Australians fall victim (Based on a submission by ASIC)

In each case, advisers were involved in recommending and facilitating examples of products that were inappropriate or exploitative for older persons.

INDUSTRY EXAMPLE

FINANCIAL PLANNING

Examples of problematic financial advice include financial products:

> *Financial products can be difficult to understand by many people let alone by those with diminished financial capacity. This complexity imposes an ethical duty on financial planners to ensure that elderly clients have financial capacity. These ethical duties apply when:*
>
> - *considering the appropriateness of investment products*
> - *formulating protocols or procedures when advising clients with diminished financial capacity*
> - *advising clients with diminished capacity through appropriate communications*
> - *recognising the potential for fraud and abuse by trusted family members, friends, or strangers*

TEALE 2015 Financial Planning Research Journal

BEFORE WE LEAVE

REFLECTION

Think about this excerpt from the CPA's publication In the Black:

> *"The expectation that the younger generation will acquire their parents' assets needs to be seriously reconsidered," according to Richard Blakeman, accountant and member of a CPA Australia taskforce on EFA.*
>
> *While accountants might not consider it their role to be on the frontline defence against abuse, they are actually well placed to do so.*
>
> *"We are in a unique position of being a trusted profession, and we have detailed information about people's financial affairs," says Blakeman.*
>
> *"We have a responsibility to the community to play our part to help ameliorate this significant and growing problem."*