

Submission to the Law Commission

Consultation on Hate Crime

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Submission compiled by:

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Gary is the former CEO of the charity, Action on Elder Abuse. He has extensive knowledge and experience of elder abuse and associated issues. In 2012 Gary was awarded an honorary doctorate by Northumbria university for his work on elder abuse, and also received the award for 'outstanding contribution to social care' by the prestigious British Care Awards. In 2018 he was awarded British Geriatrics Society Special medal, which is given to individuals whose work to promote the health and wellbeing of older people throughout society has been outstanding.

Bridget Penhale, Reader Emerita at University of East Anglia

Bridget is a former social worker, manager and academic, who retired from full-time work at the University of East Anglia (UEA), Norwich in Summer 2020. She holds an Emerita position at UEA and also undertakes independent consultancy in relation to adult safeguarding and adult social care. She has a subject interest in social gerontology, having specialised in clinical work with older people since 1983 and academically since taking up her first academic position in 1989. She is recognised nationally in the UK for her work on adult safeguarding/protection and internationally for her work on elder abuse. In 2010 Bridget received the International Rosalie Wolf Award for her work in the field of elder abuse research and practice. She has undertaken mixed-methods research on adult safeguarding and elder abuse in the UK and Europe. Bridget has also acted as a consultant/advisor to the Department of Health (England), the European Commission and the World Health Organisation and participated in an Expert meeting on Violence against older women held at the UN (New York). Her research interests include elder abuse, adult protection/safeguarding and domestic violence as well as broader interests in care of older people and mental health problems relating to older people.

Jayne Connery, Director/Founder Care Campaign For The Vulnerable

Jayne founded *Care Campaign for the Vulnerable* after her own mother suffered serious abuse and failings when in care. She now supports families who suffer the same fate. An advocate of safety monitoring in the care of vulnerable elderly and calling for abuse and wilful neglect committed against elderly to be made a hate crime. A strong supporter of elder human rights and championing better support for families in care and their dedicated care staff.

Ian Cranefield, Consultant Solicitor, Richard Nelson LLP

Ian has been a solicitor since 1995. Since 2003 he has specialised in and developed a practice in civil law remedies for elder abuse and adult safeguarding. He worked closely with the charity Action on Elder Abuse in delivering seminars on the subject and presenting formal submissions in advance of the Care Act 2014. He champions the rights of people vulnerable due to their age, infirmity or disability to exploitation

by other people. Ian works on a self-employed consultancy basis with Richard Nelson LLP in Nottingham and nationally, undertaking legal casework, training and development.

Steve James, Retired Head of Adult Safeguarding, and former AEA trustee

Steve spent over forty years working within health and social care. Trained and practised as a mental health nurse, and social worker, including approved social worker (Mental Health Act) in a broad range of statutory settings and grades, including; Hospital Social Worker, Team Manager of district social work team and community mental health team (older people), Adult Protection Co-ordinator, Head of Adult Safeguarding at three local authority areas, as well as serving as a trustee for over twenty years with Action on Elder Abuse.

Paul Greenwood, Recently retired deputy district attorney and former lead elder abuse prosecutor at San Diego DA's Office

Paul is a UK and California lawyer specialising in elder abuse prosecutions for 22 years, operating from a dedicated elder abuse team in the District Attorney's office. He now uses those experiences as a teacher, consultant and expert witness.

SCOTLAND:

Recommendation 10

There should be a new statutory aggravation based on age hostility. Where an offence is committed, and it is proved that the offence was motivated by hostility based on age, or the offender demonstrates hostility towards the victim based on age during, or immediately before or after, the commission of the offence, it would be recorded as aggravated by age hostility. The court would be required to state that fact on conviction and take it into account when sentencing

Independent Review of Hate Crime Legislation in Scotland, Final Report, 2020

NORTHERN IRELAND:

Paragraph 7.211

The approach in Scotland in the Scots Hate Crime Bill defines age as a 'range of ages' and I am content to recommend a similar approach for Northern Ireland. I therefore recommend that there should be a statutory aggravation based on age hostility.

Hate Crime legislation in Northern Ireland, Independent Review, Final Report, 2020

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PART ONE: CRIMES AGAINST OLDER PEOPLE: DEFINITIONS AND BREADTH

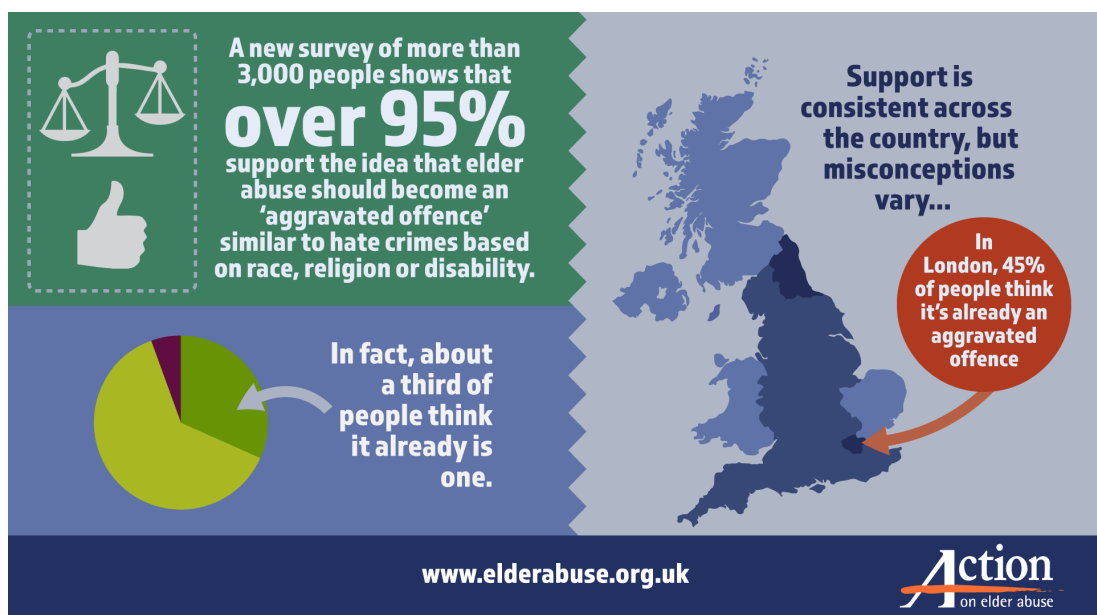
1. UNDERSTANDING THE BREADTH OF CRIMES AGAINST OLDER PEOPLE:

- 1.1. In considering the potential to which hate crime can be considered a facet of some criminal activity perpetrated against older people, there are a number of factors that influence both our understanding of the issues and our appreciation of the evidence that may be available. Some of these relate to how age is perceived in our society, the bearing that this might have on how law is conceived, and the extent to which concepts can be transferred from one group of disadvantaged peoples to another.
- 1.2. Some older people suffer the most horrendous of crimes, with levels of cruelty and suffering that are hard to comprehend. Certainly, from a moral perspective it would be difficult not to perceive that levels of hatred and hostility must be inherent in such actions as an explanation of the motives of the perpetrators.
- 1.3. One challenge is that crimes against older people are not considered or categorised under one single heading, but are instead catalogued according to where they occur (e.g. in a care setting or in the street), or whether they are viewed under a criminal justice strand (e.g. police, CPS and courts) or a social policy/welfare strand (adult safeguarding and care regulation).
- 1.4. Ageism permeates our society, and it is impossible to ignore the impact that it has on individual perceptions of age, types of crimes perpetrated against older people, and how society, institutions and the law respond to those crimes. It also impacts on how some older people perceive themselves and how and why they may become victims of crime.
- 1.5. The Law Commission consultation document '*observe(d) how some have argued that policy and media reactions to the ongoing COVID-19 crisis have revealed the lower value placed upon older people in society*' while '*the notion that older people have been regarded as less valuable throughout the pandemic has also been raised in the context of care homes.*'¹ However, these statements do not sufficiently reflect the extent and impact of negative attitudes and actions toward older people during the pandemic and beyond.
- 1.6. Indeed, it could reasonably be argued that the chaotic approach to the coronavirus and social care brought the issue of ageism firmly into perspective. Some appalling examples emerged, from the misuse of Do Not Attempt Resuscitation Notices (DNAR) through to the discharge of infected older patients into care homes without testing or isolation, through to the almost casual proposal/acceptance that suddenly older people had less rights to medical care in preference to other generations.

¹ The Law Commission (2020) *Hate Crime Laws, a consultation paper (250)*, London: The Law Commission

- 1.7. In a COVID sense, the message from society and its institutions was grim if you were over a certain age, but it is important to note that this was an extreme manifestation of attitudes and behaviour that routinely impact upon the lives of older people every day and which have done so for many decades, COVID19 notwithstanding. These have allowed certain crimes to be recategorized as lesser issues, failed to adequately acknowledge the motivations of some perpetrators and the societal permissions under which they have operated, and denied older people access to a criminal justice system that had previously been a right in their earlier years.
- 1.8. In order to quantify and understand crimes against older people the Law Commission consultation has focussed in part on elder abuse, using the World Health Organisation (WHO) definition as a starting point, and considering consequent prevalence data. But the term 'elder abuse' (in UK jurisdictions) is a social policy construct, not a criminal one, with inherent limitations in its understanding of crime and perpetrator motivations. It therefore represents only a part of the overall picture of crime relating to older people, with definitions that are much more limited than those within the criminal justice environment.
- 1.9. Further, several different definitions of elder abuse have been used within the prevalence research, all of which have an impact in terms of understanding the scale and nature of such crime. To some extent the Law Commission consultation paper mixes these definitions when attempting to ascertain prevalence, and this needs to be better understood in order to establish more likely levels of prevalence.
- 1.10. The first section of this submission considers in more detail: ageism, the impact of COVID, and the complexity of elder abuse.

Providing a context



Source: Action on Elder Abuse graphic, 2017: see paragraph [2.45](#) for details

Ageism:

- 1.11. As noted in the Law Commission consultation paper, *'the 85+ age group is the fastest growing in the UK and is predicted to double to 3.2 million by mid-2041 and treble to 5.1 million by 2066.'*² The number of people aged 65 and over will increase by more than 40% within 20 years. (Office for National Statistics, 2017).³ Consequently, how older people are perceived and treated, both as a 'group' and also as individuals, will become increasingly significant.
- 1.12. Age UK have argued that *'age is a relatively unique social characteristic because people's age changes continuously and because everyone who belongs to any age category has already been a member of an earlier age category. This means that age discrimination will have unique qualities that make it different from gender, ethnicity, disability and other equality strands, and why age deserves close attention in its own right'*.⁴
- 1.13 However, 'old age' has a unique facet in that it often evokes mixed feelings. While people tend to want to *get* old, as few people want to die young, people often also tend to resist the idea of *being* old. This can be attributed to negative stereotyping of old age, whereby illness, disease, dependency and frailty are often over-emphasised, making people fearful of what they could become. Of course, the reality is that dependency and frailty are more likely to increase as people become *very* old, - although not all older people experience health deterioration as they age - but the stereotype is nevertheless applied to all ages considered to fall under the 'old' category.
- 1.14 Bows has argued that *'Older age is not a feature of difference, but similarity and older people are increasingly forming a majority in society, rather than a minority. Older age is 'group' that the vast majority of us will become members of, regardless of our other identities'*⁵. According to the ONS data in 2018 one in every five people (18.3%) were aged 65 years and older, less than one fifth of the overall population⁶ although, as indicated previously, this proportion is set to grow over the coming decades. This is a significant minority of the population.
- 1.15 However, regardless of whether the vast majority of people will eventually become old, this does not change the distinctive negative position and connotation of old age within society, which sets it apart from other ages, thus emphasising difference. Ageism primarily influences and affects those people perceived as being old, something that does not happen with other age groups.

² Law Commission (2020) *Hate Crime Laws, a consultation paper (250)*, London: The Law Commission,

³ Centre for Ageing Better (2020) *Dodderly but dear? Examining age related stereotypes*, London: Centre for Ageing Better

⁴ Age UK (2011) *Ageism in Europe, findings from the European Social Study*, London: Age UK

⁵ Bows, H. (2020) *Is more law the answer? Discussion Document*. See also: Bows, H. (2020) *Violence and Abuse of older people – a review of current proposals for criminalisation*, *Criminal Law Review*, 2020, 10, 882-899

⁶<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/articles/overviewoftheukpopulation/august2019#the-uks-population-is-ageing>

- 1.16 Discriminatory aspects of ageism⁷ have been strongly linked to gerontophobia.⁸ This irrational fear or hatred of older people is associated with the fact that someday the majority of people will inevitably be old and potentially experience irreversible health decline that often develops with old age, which is associated with disability, disease and death. The sight of aged people is a reminder of death (*memento mori*) and inevitable biological vulnerability. This unwillingness to accept the reality of ageing manifests in feelings of hostility and discriminatory acts towards older people.⁹
- 1.17 In that context, it is worth noting that the AGE UK analysis of the European Social Study showed that, in the UK, people in their 20s and people over 70 were most often seen as two separate groups in the same community (47%). By comparison, only 12% of respondents thought of people in their 20s and people over 70 as one group.¹⁰ Consequently, regardless of whether older people perceive themselves as a distinct group (and consequently 'different'), there is evidence that society does through ageism, and specific sectors of society do so in terms of targeting and prejudice.
- 1.18 While there is a willingness to recognise prejudice and hostility based on disability and gender, this willingness is not necessarily forthcoming with age related actions. The argument that crimes and abuse experienced by older people are a consequence of other factors e.g. their gender, or their disability, or perceived vulnerability, but not their age is not supported by evidence, rather it is an argument that may in itself be a result of age-related blindness or even prejudice.
- 1.19 Such arguments ignore high-profile cases such as former nurse Colin Norris¹¹, Benjamin Geen¹², General Practitioner Harold Shipman¹³, and the 'nightstalker' Delroy Grant¹⁴ (who was responsible for burgling and raping or sexually assaulting more than 200 elderly women and men over two decades), as well as countless others – perhaps not as extreme - where the predominant focus was on the age of the victim rather than their gender or disability.
- 1.20 Additionally, an internet search provides multiple examples of probable hate crimes against older people. Some of these relate to random attacks by strangers in public, others by care staff, and others that are categorised as 'mate crime'. It is unlikely that these have been recognised or recorded as hate crime within the criminal justice system. But they adequately demonstrate that the argument '*older victims of*

⁷ https://en.wikipedia.org/wiki/Gerontophobia#cite_note-4

⁸ Bunzel, J. H. (1972) "Note on the history of a concept-gerontophobia." *Gerontologist* 12:116-203.

⁹ Levin, J. and Levin, W. C. (1980). *Ageism, prejudice and discrimination against the elderly* (p. 94). Belmont, Calif.: Wadsworth Pub. Co.

¹⁰ Age UK (2011) *Ageism in Europe, findings from the European Social Study*, London: Age UK

¹¹ <https://www.scotsman.com/news/hatred-turned-colin-norris-serial-killer-2478080>

¹² http://news.bbc.co.uk/2/hi/uk_news/england/4918462.stm

¹³ <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/harold-shipman-victims-list-who-14579587>

¹⁴ <https://www.theguardian.com/uk/2011/mar/25/night-stalker-jailed-life>

*crime are rarely targeted because of hostility or hatred towards older people*¹⁵ is not sustainable. (See Appendix A for a list of examples)

- 1.21 Equally, it has been argued that introducing older age as a protected characteristic may itself be an ageist policy, as it is *based on the labelling of all older people as 'vulnerable' which is associated with broader depictions of older people as frail, weak and dependent*.¹⁶ But this is an argument that could be applied equally with regard to people with disabilities. Chakraborti and Garland acknowledge that there is resistance amongst certain targeted groups – most notably disabled people – to the term vulnerability, and its patronising overtones. Their response is to emphasise that the term *"encapsulates the way in which many hate crime perpetrators view their target: as weak, defenceless, powerless or with a limited capacity to resist"*.¹⁷
- 1.22 The Law Commission consultation paper notes this point, that many people included under the disability criteria of current Hate Crime legislation may not perceive themselves as such, and that the term 'vulnerable' is not one that many people with disabilities find acceptable. This is of course not an argument for excluding people with disabilities from protected characteristics, and nor should it preclude the inclusion of older age. While there are issues with the term 'vulnerability' that should not be ignored, it is not in itself an argument against perceiving some crimes against older people as hate crimes.
- 1.23 Interestingly, some older people tend not to readily perceive themselves as old or vulnerable, while conversely being willing to identify other older people as such. The Commissioner for Older People in Northern Ireland explains that, *'this reluctance is in part due a desire to avoid perceived associated labels such as 'frail' or 'elderly' and the implications this can have for older people's sense of self'*.¹⁸ Equally, some victims may not realise they have been targeted because of their personal characteristics and therefore they have been the victim of a hate crime.¹⁹ Ultimately, age is a very complex social identity. However, the interplay between a person's individual and group identity affects how they are seen by themselves and others.²⁰
- 1.24 But, regardless of how older people may perceive themselves, in the context of hate crime the issue is more about how society views them, and how individual crime perpetrators may view them. And, whatever and however they may feel about it, they have *little or no control over the fact they have the characteristic of being older*.

¹⁵ Bows, H. (2020) Is more law the answer? Discussion Document. See also: Bows, H. (202) Violence and Abuse of older people – a review of current proposals for criminalisation, *Criminal Law Review*, 2020, 10, 882-899

¹⁶ Bows, H. (2019) Prosecution of Elder Abuse, Submission to Scottish Justice Committee, Durham: Law School

¹⁷ Chakraborti, N. and Garland, J. (2012) "Reconceptualizing hate crime victimization through the lens of vulnerability and 'difference'" *Theoretical Criminology* 16, (4), 499-514.

¹⁸ Brown, K. & Gordon, F. (2019) *Improving Access to Justice For Older Victims of Crime: Older People as Victims of Crime and the Response of the Criminal Justice System in Northern Ireland*. Belfast: Commissioner for Older People for Northern Ireland.

¹⁹ HMICFRS (2018) *Understanding the difference: the initial police response to hate crime*, London: HMICFRS

²⁰ Swift J and Steeden B (2020) *Exploring representations of old age and ageing, Literature review*, Canterbury: University of Kent, published by Centre for Ageing Better

They are perceived to have common characteristics, whether the perpetrator is deliberately targeting them or acting opportunistically. Perpetrators of crimes against older people intentionally select their victims because of the victim's status as members of the older population.²¹ This mirrors an observation made in the Law Commission consultation report that, '*part of the discrimination faced by disabled people – and other characteristic groups – arises from the very fact that others choose to define them by this characteristic*'.

- 1.25 Ageism can be described as the stereotyping, prejudice and discrimination towards people because of their age. It affects older people as a homogenous group and it potentially affects all older individuals, although some – depending upon their circumstances - are better at protecting themselves from its effects. It has an impact on the services people can access, their position in society, and how they are viewed by others.²² This is particularly relevant in considering criminal activity. Research in Northern Ireland has demonstrated that there are common aspects to the experience of older victims of crime of which agencies of the criminal justice system should be aware.²³
- 1.26 In that sense, the reality for older people is similar to that of women from a hate crime perspective; their experiences may not be homogenous and can differ markedly depending on race, gender identity, religion, sexual orientation, disability status and class. But, at a broader level, almost all older people are collectively affected by ageism, and are potential targets for hate crime.
- 1.27 Sometimes we develop negative attitudes towards those we see as different to ourselves, a process that is often called 'othering'. The process of othering results in stereotypes, with stereotypes of older people in the UK tending to be more negative than positive (Swift et al, 2017; Posthuma & Campion, 2009).²⁴
- 1.28 Stereotypically, we are at times invited to pity older people because of a misconception that older age groups are inherently physically and mentally less capable than younger people, but at other times we are encouraged to be angry that older people enjoy greater political power, accumulated wealth and an apparently unfair share of public resources. The ultimate consequence of such negative and divisive framing is a society in which later life is seen as something to fear or dread and older people are seen as a burden.²⁵

²¹ Hull, H-G. (2009) The Not-so-golden years: why hate crime legislation is failing a vulnerable ageing population, *Michigan State Law Review*, 2009, (2), 384

²² Carney, G. and Nash, P. (2020) *Critical Questions for Ageing Societies* Bristol, Policy Press

²³ Brown, K., & Gordon, F. (2019) *Improving Access to Justice For Older Victims of Crime: Older People as Victims of Crime and the Response of the Criminal Justice System in Northern Ireland*. Belfast: Commissioner for Older People for Northern Ireland.

²⁴ Centre for Ageing Better (2020) *Dodderly but dear? Examining age related stereotypes*, London: Centre for Ageing Better

²⁵ Centre for Ageing Better (2020) *An Age old problem? How society shapes and reinforces negative attitudes to ageing*, London: Centre for Ageing Better

- 1.29 Media representations tend to draw more on those negative stereotypes, reflecting a traditional ‘deficit’ narrative of ageing being associated with inevitable decline (reviewed in Bugental & Hehman, 2007; Kesby, 2017). Within print media, older people are represented as being more of a burden than benefit, with a huge dearth of positive images of older people (Bai, 2014; Martin, Williams, & O’Neill, 2009; Rozanova, 2010). This language and approach contributes to the process of ‘othering’ and can stoke perceptions of conflict between generations, apparent at a personal level when older people are de-humanised by terms such as ‘hags’ and ‘fossils’ (Jonson, 2013).^{26 27}
- 1.30 In fact, societal attitudes of ageism, negative attitudes towards older people and stereotyping already devalue and marginalise older people, and this can become the breeding ground for negative behaviours, and in part increase the need for dedicated legislation in order to counter what is a major influencing factor on people within society. Hirst, et al. (2016) identify that negative attitudes towards older adults maintain the problem of abuse by stating that ‘*as long as older adults are devalued by society, they will remain highly susceptible*’ to experiencing abuse.
- 1.31 Such attitudes result in lower self-esteem, increase the likelihood of social exclusion and threaten people’s ability to have fulfilled lives. Abuse worsens social isolation, and vice versa, thereby perpetuating a vicious cycle in which older people who are isolated are more likely to be abused and have less opportunity to seek help.
- 1.32 Abuse is associated with extreme stress, and confers an additional risk of death.²⁸ The consequences of abuse can therefore be serious and have far-reaching effects for older people.²⁹ It can lead to physical injuries – ranging from minor scratches and bruises to broken bones and disabling injuries – and serious, sometimes long-lasting, psychological consequences, including depression and anxiety. For older people, the consequences of abuse can be especially serious and convalescence longer. Even relatively minor injuries can cause serious and permanent damage, or even death. A 13-year follow-up study found that victims of elder abuse are twice more likely to die prematurely than people who are not victims of elder abuse.^{30 31}
- 1.33 In 2011 Age UK published an analysis of the European Social Study, considering perspectives of ageist attitudes across multiple European countries. With specific regard to the UK, 64 % of the respondents perceived age discrimination as a quite or very serious problem. This was the second highest level of perception of

²⁶ Centre for Ageing Better (2020) *Dodderly but dear? Examining age related stereotypes*, London: Centre for Ageing Better

²⁷ Swift J and Steeden B. (2020) *Exploring representations of old age and ageing: Literature review*, University of Kent, published by Centre for Ageing Better – London: Centre for Ageing Better

²⁸ Lachs, M.S, Williams, C.S, O'Brien, S, Pillemer, K.A. and Charlson, M.E. (1998) The mortality of elder maltreatment. *Journal of the American Medical Association*, 280:428–432.

²⁹ Krug E et al., (eds). (2002) *World report on violence and health*. Geneva: World Health Organization.

³⁰ WHO (2020) *WHO fact sheet on elder abuse*. Geneva: WHO (available from: <https://www.who.int/news-room/fact-sheets/detail/elder-abuse>)

³¹ Lachs, M.S, Williams, C.S, O'Brien, S, Pillemer, K.A and Charlson, M.E. (1998) The mortality of elder mistreatment. *JAMA*. Aug 5;280(5):428-32.

discrimination as a very/quite serious problem, substantially more so than the European average (44%).³² Older people were viewed as low in competence, a view much stronger in the UK than elsewhere, and the difference in this perception was statistically significant.³³

- 1.34 The 15–24 age group in the UK showed a relatively high proportion of respondents who reported negative feelings towards people aged over 70. Thus, the youngest age group harboured the most negative feelings towards older people. Additionally, people in their 20s and people over 70 were most often seen as two separate groups in the same community (47 per cent). By comparison, only 12 per cent thought of people in their 20s and people over 70 as one group.³⁴
- 1.35 Ageism assumes a different pattern from some other forms of prejudice. In certain situations, or when thinking of particular contexts, people generally seem to be less cautious about expressing age prejudice explicitly (Nelson, 2002). In this way, it is quite distinctive from prejudice based on race or gender. Since ageism seems to be expressed more freely, it is important to understand who feels more (and less) inhibited about expressing it and why.³⁵ It is also important to understand the terminology that is often used against older people, and the impact that this can have on how they are perceived, their value to society and consequently the ‘risk’ associated with targeting them.
- 1.36 The recent report by the Centre for Better Ageing noted, ‘Most of the common terms uncovered through our analysis are highly gendered, with women often portrayed as either looking ugly and unpleasant (e.g. ‘old hag’) or being referred to in a much more patronising manner (e.g. ‘little old lady’). This use of patronising language can evoke pity towards a group seen by many as vulnerable.

Older men are often described in such a way that suggests they are stuck in their ways (e.g. ‘old codger’) and sometimes as perverted or creepy (e.g. ‘dirty old man’).

³² Age UK (2011) *Ageism in Europe, findings from the European Social Study*, London: Age UK

³³ Age UK (2011) *Ageism in Europe, findings from the European Social Study*, London: Age UK

³⁴ Age UK (2011) *Ageism in Europe, findings from the European Social Study*, London: Age UK

³⁵ Age UK (2011) *Ageism in Europe, findings from the European Social Study*, London: Age UK

- 1.37 These terms are not primarily gender or disability based, they are focused on the age of the person:

Descriptive adjectives describing 'old' in social media		
Phrases	Relative difference	Frequency compared to standard (Total number English =10,783,461)
Wee granny	22.5x	73
Sad old	17x	167
Old fart	13x	872
Old hag	12x	399
Old codger	11.5x	169
Old granny	11x	128
Bitter old	9.5x	172
Old man	6x	13178
Old bidy	5.5x	61
Dirty old man	5x	189
Old crone	4.5x	66
Old woman	3.5x	1654
Grumpy old man	3.5x	234
Grumpy old	3x	410
Little old lady	3x	288
Old enough	2.5x	198

Relative difference of each feature (topic, word, phrase, grammar or emotion) is calculated by dividing the normalised frequency percentages of the feature in one source (in this case, social media) by the other source (in this case, online news). 'Bitter old hag' has been excluded from the results due the small sample size of 12 instances of this word in social media sources.

- 1.38 According to the Age UK analysis of the European Social Study, 41% of the UK population thought that people over 70 made little economic contribution, 36% thought that people over 70 were a burden on healthcare services, and people over 70 were not perceived to have a particularly high status.³⁶
- 1.39 These intergenerational threat findings corroborate past research (Abrams, Eilola and Swift, 2009) indicating concern in the UK that older people pose an economic threat by not contributing enough to the economy, and an indirect threat by being a burden on health services. This finding might be a consequence of the growing pressures on pension provision and it seems possible that these perceptions of threat might well be accentuated by people's concerns about their national economy.³⁷

³⁶ Age UK (2011) *Ageism in Europe, findings from the European Social Study*, London: Age UK

³⁷ Age UK (2011) *Ageism in Europe, findings from the European Social Study*, London: Age UK

- 1.40 This wider intergenerational threat can establish a justification in the eyes of some potential perpetrators that older people are a legitimate target, particularly with increased media attention in the last few years around perceptions that older people are economically better protected,³⁸ that they are responsible for the Brexit result,³⁹ that they have not taken their ‘fair share’ of the recession/COVID financial consequences.⁴⁰ *‘The insecure realities of 21st-century life for younger people have fostered the idea that if older people have been lucky enough to buy their home and receive a half-decent pension, that somehow characterises them as the recipients of unjust luxury.’*⁴¹
- 1.41 The COVID19 pandemic highlighted this issue and the United Nations noted, *‘At a time when more solidarity is needed, COVID-19 is escalating entrenched ageism, including age-based discrimination and stigmatization of older persons. It is worrying that remarks and hate speech targeting older persons have emerged in public discourse and on social media as expressions of inter-generational resentment’.*⁴²
- 1.42 Prescriptive age stereotypes define what we think older people should and should not do: that older people should pass on power to younger people (succession), not consume too many shared resources (consumption), and not engage in activities more associated with younger people (identity) (North & Fiske, 2013a).⁴³
- 1.43 When older people violate prescriptive stereotypes, for example by working beyond traditional retirement age or by behaving in ways seen to be ‘young’, they can experience backlash and face criticism and censure (North & Fiske, 2013a). This backlash has been associated with hostile forms of ageism, such as social exclusion, particularly in times of resource scarcity and demonstrates clearly the power of prescriptive stereotypes to influence behaviour and the experiences of older people (North & Fiske, 2013a; North & Fiske, 2016).⁴⁴
- 1.44 In the UK we have seen emerging conflicting narratives of intergenerational conflict, in which older people are depicted as hostile “villains” unfairly consuming too many of society’s resources (Kesby, 2017).⁴⁵ *‘Intergenerational fairness is also framed through an economic lens. Discourse here focuses on how policies related to older people can affect younger people. Even though, broadly speaking, the baby boomer generation is wealthier than younger generations, the intergenerational ‘fairness’*

³⁸ <https://www.theguardian.com/commentisfree/2015/mar/06/guardian-view-generation-gap-youth-clubbed>

³⁹ <https://www.independent.co.uk/news/uk/politics/brexit-why-did-old-people-vote-leave-young-voters-remain-eu-referendum-a7103996.html>

⁴⁰ <https://www.smf.co.uk/publications/intergenerational-fairness-coronavirus/>

⁴¹ <https://www.theguardian.com/commentisfree/2020/apr/26/prejudice-older-people-coronavirus>

⁴² Secretary General, United Nations (2020) *Policy brief: The impact of COVID-19 on older persons*, New York: United Nations

⁴³ Swift J and Steeden B (2020) *Exploring representations of old age and ageing, Literature review*, University of Kent, published by Centre for Ageing Better, London: Centre for Ageing Better

⁴⁴ Swift J and Steeden B (2020) *Exploring representations of old age and ageing, Literature review*, University of Kent, published by Centre for Ageing Better, London: Centre for Ageing Better

⁴⁵ Centre for Ageing Better (2020) *Dodderly but dear? Examining age related stereotypes*, London: Centre for Ageing Better

narrative often ignores the fact that there is inequality within generations too. This creates an inaccurate sense of competition for resources between generations, rather than between the wealthy and the poor. Generations then become proxies for either wealth or poverty, and the true picture of inequality is hidden.⁴⁶ Despite these perceptions being inaccurate, they nevertheless can establish a justification for prejudice and hatred.

- 1.45 Hate crimes do not occur in a vacuum; they are a violent manifestation of prejudice, which can be pervasive in the wider community. Hate crimes target an aspect of a person's identity that is unchangeable or fundamental to a person's sense of self.⁴⁷ Ageism is endemic within our society, it creates a stereotype of older people who are collectively perceived as frail and vulnerable, an economic and health burden, and a reminder of mortality. This is different from a characteristic such as eye colour which, while also being an immutable characteristic, does not attract such prejudice and hostility.
- 1.46 Additionally, ageism provides societal permissions for organisations and people to act in ways that dehumanize older people, that allow levels of poor-quality care in social and healthcare services that in some cases become criminal in nature but often without prosecution. Ageism acts as a 'master category' in which what happens to older people does not matter, with abuse being a consequence of this.⁴⁸ And if people's ongoing experiences in engaging with older people are drastically reduced to a point where day to day interaction and activity is inherently abusive, it inevitably leads to a point where that abuse/crimes are no longer seen or recognised for what they are.
- 1.47 The Parliamentary and Health Services Ombudsman articulated this very clearly in relation to the NHS care of older people when she observed, *'The investigations reveal an attitude – both personal and institutional – which fails to recognise the humanity and individuality of the people concerned and to respond to them with sensitivity, compassion and professionalism*.⁴⁹
- 1.48 Analysis of the language used on twitter by groups of health profession students working with older mentors, found that 12% contained age discriminatory language (Gendron, Welleford, Inker, & White, 2015).⁵⁰
- 1.49 In 2004 the Pulse magazine published an article by a GP, in which he envisaged the construction of a residential home in his catchment area:

⁴⁶ Centre for Ageing Better (2020) *An Age old problem? How society shapes and reinforces negative attitudes to ageing*, London: Centre for Ageing Better

⁴⁷ OSCE (2009) *Hate Crime Laws; a practical guide*, London: OSCE

⁴⁸ Paper by Penhale, B, (2010) Responding and Intervening in Elder Abuse, *Ageing International*, 35, 3, 235-232

⁴⁹ PHSO (2011) *Care and Compassion? Report of the Health Service Ombudsman on ten investigations into NHS care of older people*, London: TSO

⁵⁰ Swift J and Steeden B (2020) *Exploring representations of old age and ageing, Literature review*, University of Kent, published by Centre for Ageing Better, London: Centre for Ageing Better

‘According to the sign, this legend stands for ‘Quality Care Homes’. But from a GP’s point of view, it means something else entirely. My partner thinks it signifies ‘**Quavery Codgers Here**’, while I think it means ‘**Quantity of Crinkly Heartsinks**’...Then came the fateful day. A series of taxis, ambulances, and in one or two cases, forklift trucks arrived, delivering the hapless new residents to their cells. Frantically we redrew our practice boundary to include an area not more than nine inches from the surgery walls, but it made no difference. Each letter, in essence, said the same thing. ‘This **crumbly, senile old git** has been allocated to your list. He/she is your problem now, pal. Enjoy’... I am dealing with a **comatose old bag of bones**.’

- 1.50 The terminology used by the GP, a professional in a key position for older people, demonstrates the consistent stereotype of older care home residents, dehumanises them entirely, and portrays them as a problem. While many people would be appalled by the terminology used, it reflects an apparently increasing and wider perception of care home residents.
- 1.51 However, it is important to note that the terminology was not based on gender or disability, but firmly focussed on age.
- 1.52 In 2020, during the COVID19 pandemic, GP’s imposed blanket DNAR (Do not attempt resuscitation) notices on older people in care homes, refused to visit those homes, and refused to admit older people to hospital. This was a consequence of an ageist system that had already conditioned them to think and behave in a certain way toward older patients, both as a group of professionals and as individuals.
- 1.53 Ageism - the stereotyping, prejudice and discrimination towards people because of their age - pervasive before the pandemic and a risk factor for violence against older people, worsened during the pandemic.⁵¹ According to the United Nations, at a time when more solidarity was needed, COVID-19 was escalating entrenched ageism, including age-based discrimination and stigmatization of older persons. *‘It is worrying that remarks and hate speech targeting older persons have emerged in public discourse and on social media as expressions of inter-generational resentment’.*⁵²
- 1.54 *Ageism is not an inevitable consequence of real or natural differences between age groups. The findings in this report (Ageism in Europe) accord with the growing body of research to show that ageism is rooted in the way people categorise and stereotype age, in the perceptions of threat from different age groups, and in a lack of shared understanding and positive relationships between people of different ages. All of these factors are amenable to political and social intervention. Yet a more basic point is that the wide differences in the prevalence of experience of ageism in different countries shows that this type of experience is clearly amenable to influence*

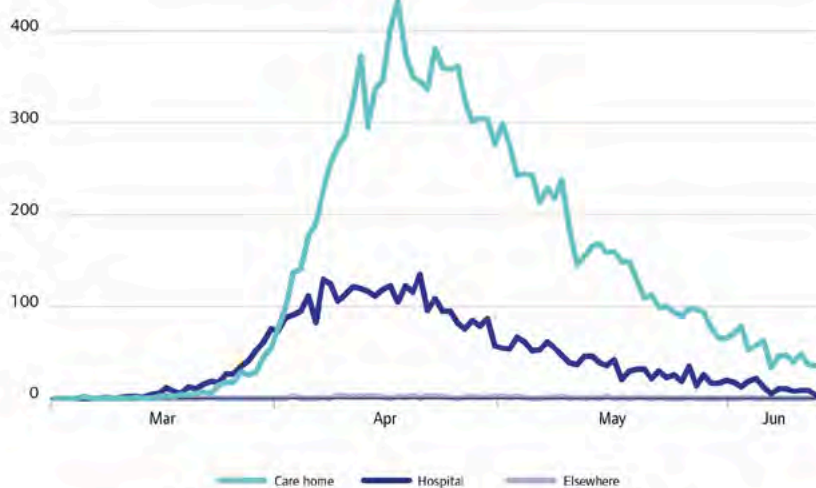
⁵¹ WHO (2020) *WHO factsheet: COVID19 and Violence against older people*, Geneva: WHO

⁵² UN Secretary General (2020) *Policy brief: The impact of COVID 19 on older persons*, New York: United Nations

from cultural, social and political sources, and is not an evitable consequence of biological and maturational differences between people of different ages.⁵³

- 1.55 To understand the abuse, neglect and crimes against older people – including Hate Crimes – we have to understand the extent and pervasiveness of ageism within our society, institutions and structures, all of which affect older people at a group as well as at an individual level. *The harm caused by the crime is not limited to the affected individual, but impacts more broadly on people who share the characteristic to which the offender’s hostility was directed, and the wider community to which the victims belong.*⁵⁴

COVID:



Source: Office for National Statistics, Deaths involving COVID-19 in the care sector, England and Wales.

Number of deaths of care home residents involving COVID-19 by place of death from 2 March to 12 June 2020, registered up to 20 June 2020, England and Wales

- 1.56 The Law Commission consultation paper⁵⁵ observed that some people have argued that policy and media reactions to the ongoing COVID-19 crisis revealed the lower value placed upon older people in society, and that older people have been regarded as less valuable throughout the pandemic including in the context of care homes.
- 1.57 But the reality is that the actions or inactions taken during the first wave of COVID were the consequences of decades of ageism, and they had extreme consequences as is shown in the increasing data that is emerging about that period. When people talked about having to make ‘hard decisions’, or imposed blanket DNARs, in relation to older people they were in reality taking the next logical steps in a process that has been going on for decades, albeit serious and deadly steps.

⁵³ Age UK (2011) *Ageism in Europe, findings from the European Social Study*, London: Age UK

⁵⁴ Law Commission (2020) *Hate Crime Laws, a consultation paper (250)*, London: The Law Commission

⁵⁵ Law Commission (2020) *Hate Crime Laws, a consultation paper (250)*, London: The Law Commission

1.58 In a comparatively short period of time in the UK:

- 25,000 patients, including those infected or possibly infected with COVID-19 who had not been tested, were discharged from hospital into care homes between 17 March and 15 April 2020—exponentially increasing the risk of transmission to the very population most at risk of severe illness and death from the disease.⁵⁶
- there was an increased use of anti-psychotic drugs during the period. The use of such drugs had been reduced because of concerns about safety and limited efficacy – they can increase the potential for death.⁵⁷ In September 2020, 43,352 dementia patients – 9.81 per cent of the 441,909 on the dementia register – had a recent prescription for antipsychotic medication. Of those given the drugs, only 7,391 had a diagnosis of psychosis. The proportion was up from 9.40 per cent last September 2019 when 44,994 of the 478,439 dementia patients had such a prescription.⁵⁸
- guidelines published by NHS England on its website on 10 April advised that some care home residents “should not ordinarily be conveyed to hospital unless authorised by a senior colleague.” Official figures show admissions to hospital for care home residents decreased substantially during the pandemic, with 11,800 fewer admissions during March and April compared to previous years.⁵⁹
- in several cases doctors asked that care homes include DNAR forms in all residents’ files, without due process, while some care home staff interpreted DNARs to mean that residents should not be sent to hospital.
- oversight of care provision by the Care Quality Commission was suspended at the outbreak of the pandemic in March—just as visits by families and others were stopped. By barring both oversight and family visits, the government increased the risk that care home residents would be exposed to abuses that would not be identified, reported and/or investigated.⁶⁰
- other monitoring bodies also stopped visiting care homes or even monitoring cases. The Local Government and Social Care Ombudsman suspended all casework activity that demanded information from, or action by, local authorities and care providers.
- Even local authorities, who had clear safeguarding duties, stopped visiting care homes during the pandemic, according to care home managers and families interviewed by Amnesty International.⁶¹

⁵⁶ Amnesty International (2020) *As if expendable: the UK Government’s failure to protect older people in care homes during the COVID19 pandemic*, London: Amnesty International

⁵⁷ Ballard, C. and Howard, R. (2006) Neuroleptic drugs in dementia: benefits and harm. *R Nat Rev Neurosci.* 2006; 7: 492-500

⁵⁸ [https://www.thelancet.com/journals/laneur/article/PIIS1474-4422\(20\)30370-7/fulltext](https://www.thelancet.com/journals/laneur/article/PIIS1474-4422(20)30370-7/fulltext)

⁵⁹ Amnesty International, (2020) *As if expendable: the UK Government’s failure to protect older people in care homes during the COVID19 pandemic*, London: Amnesty International

⁶⁰ Amnesty International, (2020) *As if expendable: the UK Government’s failure to protect older people in care homes during the COVID19 pandemic*, London: Amnesty International

⁶¹ Amnesty International, (2020) *As if expendable: the UK Government’s failure to protect older people in care homes during the COVID19 pandemic*, London: Amnesty International

- All types of referrals to adult safeguarding decreased during the initial lockdown phase of the pandemic, and although reports about safeguarding issues in care homes did then begin to increase, many visits to assess and investigate were restricted and took place on a virtual basis.
 - While the Coronavirus Act 2020 did not affect the safeguarding protections in the Care Act, Government guidance sought to limit the impact of abuse investigations on care providers, seeking a ‘proportionate approach.’ Principal Social Workers were told to work with their safeguarding leads to review any local policies or procedures that might be unduly time-consuming or place an undue burden on care providers during this time.⁶²
- 1.59 A group of six Sussex CCGs, including Brighton and Hove CCG and East Sussex CCG issued guidance on 23 March 2020 for COVID-19 actions for all General Practices to follow in support of Care Homes. The document instructed all practices to *“search your clinical system for any care home patients who do not have a resuscitation order recorded and put appropriate orders in place”* and to *‘ask the home to check they have resuscitation orders on every resident.’*⁶³
- 1.60 The guidance also included instructions related to hospital admission, asking GPs to ensure *“patients who do not already have a ‘do not convey to hospital’ decision are prioritised and have one in place”* The guidance was reportedly sent to 35 GP surgeries and in response 98 care homes were contacted about the above guidance, including being asked to put DNARs on the files of every patient. One care home with 26 residents had 16 individuals sign DNARs in a 24-hour period.⁶⁴
- 1.61 No actions have been taken to review the DNAR forms newly added to care home residents’ medical files and to ensure their removal following the official clarification that these should not have been initiated. In at least one case a care home inspected by the CQC at the end of June 2020 was found to have imposed blanket DNAR forms on all the residents.⁶⁵
- 1.62 In relation to health care, it is worth noting that social work staff working with older people have perceived issues of ageism in relation to older patients for many years e.g. being labelled by their illness rather than as individual people, or being referred to as bed-blockers⁶⁶. And Action on Elder Abuse challenged the misuse of DNAR forms nearly ten years before COVID.⁶⁷

⁶² DHSC (2020) *Care Act Easements: guidance for local authorities*, London: DHSC (updated 1st September 2020)

⁶³ Amnesty International (2020) *As if expendable: the UK Government’s failure to protect older people in care homes during the COVID19 pandemic*, London: Amnesty International

⁶⁴ Amnesty International (2020) *As if expendable: the UK Government’s failure to protect older people in care homes during the COVID19 pandemic*, London: Amnesty International

⁶⁵ Amnesty International (2020) *As if expendable: the UK Government’s failure to protect older people in care homes during the COVID19 pandemic*, London: Amnesty International

⁶⁶ James, S. (2020) As far back as 1979 I first heard the term 'bed blocker' applied to elderly people in hospital', (Personal Communication - Steve James)

⁶⁷ Action on Elder Abuse (2012) *The misuse of DNAR*, London: Action on Elder Abuse

- 1.63 The number of deaths of care home residents occurring in England and Wales from 28 December 2019 to 12 June 2020 (registered up to 20 June 2020) was 93,475; this was 29,393 more than the same period last year, a 46% increase. And also representing excess mortality. Of these deaths, 19,394 mentioned “novel coronavirus (COVID-19)”, which was 21% of all deaths of care home residents.⁶⁸ It is important to note that there is a view that these deaths were unnecessary and could have been avoided.⁶⁹
- 1.64 It was reported that violence against older people, who were already bearing the brunt of the pandemic, rose sharply since the beginning of the pandemic and the imposition of lockdown measures.⁷⁰
- 1.65 This situation did not develop in the absence of knowledge. The government was aware from scientific evidence that the (400,000) residents of care homes were at exceptional risk to coronavirus. Yet despite this knowledge, it failed to take measures to promptly and adequately protect care homes.⁷¹ On the same day that the WHO confirmed evidence of pre-symptomatic and asymptomatic cases of coronavirus, the Government reiterated its guidance for hospital discharges of older people stating that “negative tests are not required prior to transfers / admissions into the care home.”⁷²
- 1.66 The decisions taken in relation to older people and COVID were a culmination of ageist attitudes and policies that had developed within both health and social care sectors over decades. While extreme in their consequences they reflected an attitude and approach that is also manifest in failures within the criminal justice system, the adult safeguarding system and the care provider sector to adequately identify and prosecute crimes against older people.
- 1.67 Amnesty International noted, ‘Discussing how the CCG guidance came to be issued, a ‘senior local figure’ told Amnesty International that it was clear from conversations he had with senior figures in the local health system that they were under “an enormous amount of pressure from upwards” and that they were given instructions orally which were not sent in writing or would be worded differently when sent in writing.’⁷³ This is the stark reality of ageism in action.

⁶⁸ Care Quality Commission (202) *The state of health care and adult social care in England 2019/2020*, London: Care Quality Commission.

⁶⁹ <https://inews.co.uk/news/coronavirus-care-homes-uk-latest-covid-19-outbreak-preventable-deaths-429289>

⁷⁰ WHO (2020) *WHO factsheet: COVID19 and Violence against older people*, Geneva: WHO

⁷¹ Amnesty International (2020) *As if expendable: the UK Government’s failure to protect older people in care homes during the COVID19 pandemic*, London: Amnesty International

⁷² Amnesty International (2020) *As if expendable: the UK Government’s failure to protect older people in care homes during the COVID19 pandemic*, London: Amnesty International

⁷³ Amnesty International (2020) *As if expendable: the UK Government’s failure to protect older people in care homes during the COVID19 pandemic*, London: Amnesty International

Hospital and health care:

- 1.68 Older people are major users of the National Health Service, but there is significant evidence that ageism has a profound effect on the quality and reliability of care that they receive, with very clear examples of actions and inactions by health staff that could reasonably be considered to be motivated by hatred, hostility and/or prejudice.
- 1.69 Abuse and neglect within hospital environments are legally covered by the Care Act 2014 Adult Safeguarding provisions. (Of course, they can also be covered by various aspects of criminal legislation too). However, only a small percentage of cases proportionally are referred through the Adult Safeguarding system, with Action on Elder Abuse indicating that much goes through the internal Serious Incident route – internalized and therefore never independently evaluated.⁷⁴ (Others are diverted through employment or complaint routes).
- 1.70 In 2011, the Parliamentary and Health Services Ombudsman published a highly critical analysis of cases involving the death of an older person soon after hospital intervention. Her conclusions were stark: *‘The investigations reveal an attitude – both personal and institutional – which fails to recognise the humanity and individuality of the people concerned and to respond to them with sensitivity, compassion and professionalism.’*⁷⁵ The Ombudsman had identified an ageist attitude within the NHS that was having a significant effect on older people.
- 1.71 She noted that of nearly 9,000 properly made complaints to her Office about the NHS in the previous year, 18% had been about the care of older people. The Ombudsman had accepted 226 cases for investigation, more than twice as many as for all other age groups put together.
- 1.72 What these complaints had in common was an experience of suffering unnecessary pain, indignity and distress while in the care of the NHS. Poor care or badly managed medication contributed to deteriorating health, as people were transformed from alert and able individuals to patients who were dehydrated, malnourished or unable to communicate. The issues highlighted – dignity, healthcare associated infection, nutrition, discharge from hospital and personal care – featured significantly more often in complaints about the care of older people than with any other identified group.
- 1.73 The actions of individual staff investigated added up to what she described as *‘an ignominious failure to look beyond a patient’s clinical condition’* and respond to the social and emotional needs of the individual and their family. The difficulties encountered by the service users and their relatives were not solely a result of illness, *but arose from the dismissive attitude of staff, a disregard for process and procedure and an apparent indifference of NHS staff to deplorable standards of care.*

⁷⁴ Action on Elder Abuse (2017) *A Patchwork of Practice*, London: Action on Elder Abuse

⁷⁵ PHSO (2011) *Care and Compassion? Report of the Health Service Ombudsman on ten investigations into NHS care of older people*, London: TSO

- 1.74 She described it as incomprehensible that an Ombudsman should have to hold the NHS to account for the most fundamental aspects of care: clean and comfortable surroundings, assistance with eating if needed, drinking water availability and the ability to call someone who would respond. Half the people featured in her report had not consumed adequate food or water during their time in hospital; food was often removed uneaten and drinks or call bells were placed out of reach. These experiences were similar to those identified in the Francis Report on Stafford hospital.⁷⁶
- 1.75 This was a fundamental ageist attitude within the health service that enabled staff to dehumanize the older people in their care. She concluded that she had yet to see convincing evidence of a widespread shift in attitude towards older people across the NHS that would turn the commitments in the NHS Constitution into tangible reality.
- 1.76 A key point here is that this treatment of older people is targeted at them as a distinct group, not as individual patients, although the impact obviously occurs at the individual level. It creates concern and anxiety within the wider grouping of older people, who become aware through media reporting and family/friends of such treatment. Within a wider NHS environment that is structured around disability, illness, frailty and dependence (as a consequence of ill health) it is the age dynamic that sets this treatment apart from others.
- 1.77 Nor is this a unique situation within the NHS. There have been many ‘scandals’ that have often involved older people being treated appallingly, but invariably the standard approach of ‘investigation and lesson learning’ does not prevent such situations re-occurring, suggesting the underlying reasons are systemic. While vulnerability, frailty and age are often intertwined in these situations, it is ageism that is at the core of why these cases occur. Three examples are:
- a) The report into Rowan ward at Withington Hospital in Manchester in February 2004 recorded older people having experiencing assaults (such as slapping, hitting with a hairbrush, stamping on feet, flicking ears, squeezing lips and kicking), taunting and “winding up” of patients or mocking them, possible deliberate withholding of food as punishment, a member of staff ignoring care plans and possibly contributing to two significant falls, an unexplained scald injury and unexplained bruising on several occasions including one patient with unexplained extensive bruising to the lower body.

Taunting was often based on personal attributes or personal events in the individual’s life. Some staff commented that Rowan ward had had a poor

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<https://webarchive.nationalarchives.gov.uk/20150407084231/http://www.midstaffspublicinquiry.com/report>

reputation for years and was seen as the “naughty ward” where staff were sent as a punishment.⁷⁷

While some of the actions of abuse in Rowan ward may not have been covered by the parameters of Hate Crime, other aspects would have met the criteria of hostile intent. At the core of the behaviour in the hospital was an ageist approach that dehumanised the older patients and gave a form of permission for the behaviour of the staff.

- b) In May 1996 five student nurses voiced their concerns about physical abuse of older patients at Garlands Hospital, North Lakeland NHS Trust. The Trust Chairman established an external review panel to investigate. The review panel found that a range of "degrading - even cruel - practices" had been used by some staff and condoned by others.

The report listed allegations that had been substantiated, including: a patient being restrained by being tied to a commode; patients being denied ordinary food; patients being fed while sitting on commodes; and patients being deliberately deprived of clothing and blankets.⁷⁸

- c) The mid Staffordshire inquiry identified that hundreds of people had died at Stafford Hospital amid appalling levels of care. The inquiry identified that the Trust had failed to tackle an insidious negative culture involving a tolerance of poor standards and a disengagement from managerial and leadership responsibilities.

Patients were left in excrement in soiled bed clothes for lengthy periods; Assistance was not provided with feeding for patients who could not eat without help; Water was left out of reach; In spite of persistent requests for help, patients were not assisted in their toileting; Wards and toilet facilities were left in a filthy condition; Privacy and dignity, even in death, were denied; Triage in A&E was undertaken by untrained staff; Staff treated patients and those close to them with what appeared to be callous indifference,⁷⁹

Many of the dead were older people.⁸⁰

1.78 Consequently, while the recent COVID pandemic may have evidenced extreme perceptions of the value and worth of older people within society and within health structures, leading to decisions and actions that caused extreme suffering and even

⁷⁷ CHI (2003) Investigation into matters arising from care on Rowan ward, Manchester Mental Health and Social Care Trust, London: Commission for Health Improvement and Internal Inquiry into the standards of care Rowan ward, Withington Hospital, Manchester Mental Health and Social Care Trust, February 2004

⁷⁸ <https://publications.parliament.uk/pa/cm200304/cmselect/cmhealth/111/11106.htm#note40>

⁷⁹ See

<https://webarchive.nationalarchives.gov.uk/20150407084231/http://www.midstaffspublicinquiry.com/report>

⁸⁰ <https://www.bbc.com/news/uk-england-stoke-staffordshire-21339330>

death, the underlying ageist attitudes that gave 'societal permission' for this approach is not and are not new or confined to this context.

Elder Abuse:

- 1.79 The Law Commission consultation document has relied heavily on elder abuse definitions and data in considering crimes against older people. But there are a number of potential difficulties with this.
- 1.80 Within a UK environment elder abuse can be considered a social policy construct. The term 'triages' actions that in other circumstances might be considered crimes and instead either medicalizes them, or addresses them outside of the criminal justice system. As such it minimizes both the extent and impact of such crimes.
- 1.81 To some extent this mirrors the experience of disablist hate crime ... (which) has often been mis-categorised as a welfare, rather than criminal, issue (Hensher,2008).⁸¹ It may be that older people are seen as an 'ideal victim' group characterized by weakness and vulnerability, which, as in the case of disabled people, leads to solutions that centre around care and welfare provision, rather than criminal justice intervention.⁸²
- 1.82 As such, crimes committed against older people are often seen from a 'vulnerable victim' perspective (requiring medical intervention and social care support) rather than that of a crime survivor (requiring criminal justice intervention). This has already been noted in terms of violence against older women, which can be 'triaged' as elder abuse rather than domestic abuse, resulting in intervention that is largely health-based, which may then prioritise prescribing antidepressants or sedatives, recommending couple or family counselling, or providing help for the abuser.^{83 84 85} None of these responses addresses the nature of the crime or the role of the perpetrator.
- 1.83 Action on Elder Abuse (AEA) has noted that this is also happening in care homes, where residents should be able to expect their welfare to be paramount. Experience shows that the social care system tries to 'manage' instances of abuse internally via adult safeguarding referrals, without involving the police or criminal justice systems. They (AEA) believe this is a key reason why so few cases of abuse even reach the courts.⁸⁶

⁸¹ Garland, J. (2012) Difficulties in defining Hate Crime Victimization, *International Review of Victimology*, 18, (1), 25-37

⁸² Garland, J. (2012) Difficulties in defining Hate Crime Victimization, *International Review of Victimology*, 18, (1), 25-37

⁸³ Harris S. B. (1996) 'For better or for worse': Spouse abuse grown old, *Journal of Elder Abuse and Neglect*, 8(1), pp. 1–33.

⁸⁴ Penhale, B. (2003) Older women, Domestic Violence and Elder Abuse: a review of commonalities, differences and shared approaches, *Journal of Elder Abuse and Neglect*, 15, 3-4, 163-183

⁸⁵ Penhale, B. (2020) Gender Issues in Elder Abuse in Phelan, A. (2020) (Ed) *Advances in Elder Abuse Research, Practice. Legislation and Policy*, London: Springer

⁸⁶ Action on Elder Abuse (2017) *Elder abuse is a crime, let's make it one*, London: Action on Elder Abuse

- 1.84 Often care professionals, police and prosecuting agencies fail to recognise elder abuse or treat it as crime and a violation of human rights, and this ‘blindness’ to the criminal nature of elder abuse extends throughout the wider social and healthcare systems. As Blowers⁸⁷ points out, *‘the conceptual ambiguity surrounding elder abuse, neglect, and mistreatment has made it challenging for community providers and criminal justice officials to understand and appropriately respond to these acts.’*
- 1.85 However, it could reasonably be argued that, by placing such abusive/neglectful actions within a criminal justice context first and foremost (with the recognition that not all crimes in the UK necessarily get prosecuted) the ambiguity would be lessened or eliminated.
- 1.86 Not all crimes against older people are elder abuse. But all Elder Abuse is a crime. Whether or not it is prosecuted, like many crimes, is a different matter. It has never been the rule in the UK that every criminal offence must automatically be prosecuted. For this reason, in each case, the prosecutor must consider whether a prosecution is required in the public interest. However, it is important not to let terminology undermine the seriousness of what happens to older people.⁸⁸
- Social policy construct: Physical abuse.
Criminal Justice reality: An offence is committed when a person assaults another, thereby causing Actual Bodily Harm (ABH) or Grievous Bodily Harm (GBH). Bodily harm includes any hurt calculated to interfere with the health or comfort of the victim: such hurt need not be permanent, but must be more than transient and trifling
 - Social policy construct: Sexual abuse
Criminal Justice reality: An offence is committed when a person intentionally touches another person, the touching is sexual and the person does not consent. A person commits rape if they intentionally penetrate the vagina, anus or mouth of another person with their penis without consent. (This includes legislation around sexual assault of an adult who lacks capacity to consent (Sexual Offences Act 2003))
 - Social policy construct: Psychological abuse
Criminal Justice reality: An offence of coercive or controlling behaviour is committed in an intimate family relationship when someone isolates another; controls what they do, sees, wears etc; repeatedly denigrates them; sets rules or activities that humiliate, degrade or dehumanise; or threatens to reveal private information.

⁸⁷ Blowers, A N. (2015) Elders and the criminal justice system. *Journal of Crime and Justice* (2015): 1-8. (available from: <https://www.tandfonline.com/doi/full/10.1080/0735648X.2014.931509>)

⁸⁸ Action on Elder Abuse (2017) *Elder Abuse is a crime, now let's make it one*, London: Action on Elder Abuse

- Social policy construct: Financial abuse
Criminal Justice reality: Theft, fraud, Coercion and undue influence, and forgery. Section 1 Theft Act 1968 states that a person is guilty of theft if he or she dishonestly appropriates property belonging to somebody else. The intention must be permanently to deprive.
- Social policy construct: Neglect
Criminal Justice reality: An offence of neglect occurs when someone fails to provide sufficient supervision, nourishment, or medical care, or fails to fulfill other needs for which the person cannot provide themselves. Neglect is wilful if it is “intentional, reckless or reflects a ‘couldn’t care less attitude” An offence only occurs if someone lacks capacity or has mental health problems, or if the perpetrator works in regulated social or health care.

1.87 It is too often the case that instances of elder abuse are primarily ‘social worked’ instead of prosecuted. Unlike the empowering way in which practitioners seek to support survivors of domestic abuse, the response to cases of elder abuse is often very paternalistic. Older people are referred to as ‘victims’ rather than ‘survivors’, and the focus is primarily on safeguarding or welfare concerns rather than seeking justice.⁸⁹ Adult Safeguarding for example is primarily focused on investigating and reducing the likelihood of abuse re-occurring, not on holding perpetrators to account.

1.88 Fundamentally, there is no reason why crimes against older people should be categorized as ‘elder abuse’. The term has not been coded into legislation in the way that Domestic Abuse/Violence has been. Its origins may lie in a belief that the term in some manner had an equivalence with ‘child abuse’ when it was first coined, but the reality is that it has resulted in a marginalization of the actions of abusers, and a failure to recognise ‘abusive’ acts appropriately in law.

Understanding prevalence:

1.89 While the World Health Organisation (WHO) definition of elder abuse quoted by the Law Commission in its consultation document is one that is used in multiple countries, it is not always applied consistently and it only addresses one set of criminal situations i.e. those where there an expectation of trust has been breached. However, the focus of trust relates to the perception of the victim or the employed role of the perpetrator, not their motive (although it often creates the opportunity for the crime to occur).

1.90 The prevalence figure used by the Law Commission to consider absolute prevalence of elder abuse was not based on the WHO definition.⁹⁰ This figure only considered abuse within the narrow confine of family, friends and care workers, and excluded

⁸⁹ Action on Elder Abuse (2018) *Submission to the Justice Committee Scotland on prosecution of elder abuse*, London: Action on Elder Abuse

⁹⁰ Biggs, S., Erens, B. and Doyle, M. (2009) *Abuse and neglect of older people: secondary analysis of UK prevalence study*, London: Kings College London, National Centre for Social Research

acts committed by neighbours or acquaintances.⁹¹ It also excluded anyone who could not participate due to cognitive impairment, and it under-counted neglect and psychological abuse (by a factor of 10).⁹² Consequently, the 2.6% (227,000 people) was a limited estimate which did not adequately reflect the range of potential crimes identified within the study.⁹³

- When data on neighbours and acquaintances were included in the definition, the prevalence figure increased to 4% (342,400 people), although this still under-counted neglect and psychological abuse.

1.91 When additional analysis was undertaken which widened the definition to include single incidents of neglect and psychological abuse, and additionally expanded the definition to include neighbours and acquaintances, **the prevalence increased to 8.6%, (from 1 in 40 to almost 1 in 10)**.⁹⁴ Action on Elder Abuse estimated that the 8.6% figure increased the prevalence figure to 998,500 people (suggesting 1.6m victims by 2050).⁹⁵

1.92 Additionally, the Terms of Reference for the study had agreed and affirmed that it would be focused on community-based abuse, which means it did not include acts committed in care homes or hospitals or in the wider community. Therefore, to establish a comprehensive perspective on crimes against older people we have to consider what is known:

- (a) about those crimes that come to the attention of the criminal justice system,
- (b) elder abuse prevalence data,
- (c) adult safeguarding data as it relates to older people,
- (d) data on hospital failures and major incidents,
- (e) data on care provision neglect and abuses; and
- (f) community-based crimes such as anti-social behaviour.

It is only by considering the totality of this potential data that we can arrive at a fuller understanding of the scale of potential crimes committed against older people. (In that regard it is worth noting that AEA estimates no more than 1:10 cases reach the attention of adult safeguarding. This is despite the fact that older people represent a growing percentage of those referrals, - In England 2014/15, from 61% to 64% in five years).⁹⁶

⁹¹ In the initial analysis data on neighbours was collected and this was subsequently used in the Secondary Analysis

⁹² This was by agreement with the Steering Group for the research.

⁹³ O’Keeffe, M., Hills, A., Doyle, M., McCreadie, C. Scholes, S., Constantine, R., Tinker, A., Manthorpe, J., Biggs, S. and Erens, B. (2007) *UK Study of Abuse and Neglect of Older People Prevalence Survey Report*, London: National Centre for Social Research, King’s College London

⁹⁴ Biggs, S. Erens, B. and Doyle, M. (2009) *Abuse and neglect of older people: secondary analysis of UK prevalence study*, London: Kings College London, National Centre for Social Research

⁹⁵ Action on Elder Abuse (2017) *A patchwork of Practice*, London: Action on Elder Abuse

⁹⁶ Action on Elder Abuse (2017) *Elder Abuse is a Crime, now let’s make it one*, London: Action on Elder Abuse

- 1.93 Although this is the only prevalence study covering the UK to date, it was reported in 2007 so that the data is almost 15 years old now. As understanding about abuse/neglect/mistreatment (including poly-victimisation) has developed during that period, the previous figure is also not likely to reflect current day concerns or perspectives, or projected or likely prevalence rates
- 1.94 A fuller understanding of prevalence is considered in a subsequent section.

Defining Age:

- 1.95 The WHO notes, "*The common use of a calendar age to mark the threshold of old age assumes equivalence with biological age, yet at the same time, it is generally accepted that these two are not necessarily synonymous*". This is true. However, in terms of considering perpetrator motivation in a criminal sense, the issue is about wider societal perceptions of age and ageing, because it is these that can give rise to stereotyping, discrimination and hostility.⁹⁷
- 1.96 Limiting any change in Hate Crime legislation to focus specifically on older people would be a very strong societal message, as noted by the Commissioner for Older People in Wales. However, setting a specific chronological age to define the concept of 'old age' in this regard may not be helpful, particularly as some sectors within society age biologically faster than others⁹⁸ and people can perceive 'old age', and the point at which it begins, differently.
- 1.97 The issue in its simplest form is whether someone committed a criminal act against another person by reason of hostility or prejudice. This would require evidence of the act itself and evidence of motivation based on hostility or prejudice towards 'the victim's characteristic group', where age is a defined characteristic.

PART TWO: CRIMES AGAINST OLDER PEOPLE: CONSIDERING THE ISSUES

Perpetrator motivation:

Hostility and Vulnerability:

- 2.1 A key issue when considering crimes against older people concerns the motivation of the perpetrator, and whether it is a consequence of a particular characteristic of the victim and/or vulnerability, or something else? Some academics argue that motivation is not associated with age, but is just an extension of gender hostility⁹⁹ or disability hostility, or exploitation of vulnerability¹⁰⁰.

⁹⁷ Action on Elder Abuse (2018) *Submission to the CPS consultation on prosecuting crimes against older people*, London: Action on Elder Abuse

⁹⁸ Levine, M.E. and Crimmins, E.M. (2014) Evidence of accelerated aging among African Americans and its implications for mortality, *Social Science & Medicine* Vol 118, 27-32

⁹⁹ Bows, H. (2020) *Is more law the answer?* Discussion Document. See also: Bows, H. (202) Violence and Abuse of older people – a review of current proposals for criminalisation, *Criminal Law Review*, 2020, 10, 882-899

¹⁰⁰ Action on Elder Abuse, quoted in the Law Commission consultation document, 2020.

- 2.2 However, while there is no substantive research into perpetrator motivation to support these conclusions, there are powerful examples to question them, where age was a clear motivating factor (e.g. former nurse Colin Norris¹⁰¹, Benjamin Geen¹⁰², General Practitioner Harold Shipman¹⁰³, and the 'nightstalker' Delroy Grant¹⁰⁴). In all these cases the focus of the perpetrators was on the age of the victim rather than their gender per se or disability.
- 2.3 And there are also less extreme (i.e. not resulting in death) examples of age-related random attacks by strangers in public, the older person's equivalence of 'mate crime' – including financial scams involving romance and marriage proposals - targeted sexual attacks on care home residents, antisocial behaviour lasting years, and physical and psychological attacks in care settings. (See Appendix A for a list of examples). Often these actions can be borne of a belief (whether true or not) that the victim's age makes them an easier target – for example for financial or sexual exploitation.

EXAMPLE: Irene D owned her own home in London and had an acquaintance who she permitted to move into her home with his wife and child whilst she was away abroad dealing with her sister's terminal illness. She asked him to leave when she returned but as he had nowhere to go she made a temporary bedroom for herself in the basement of her home.

She remained living there for over two years, effectively in one room, showering at a local community centre whilst the family she had taken in had the run of the house and brought her frugal meals and soup. This family felt that it was okay to treat her in this way in her own home, that their needs, as people struggling to find a home on the housing market, somehow trumped her right to enjoy her own home. They even argued from this perspective with the High Court enforcement officer who a solicitor had arranged to evict them after a possession order was procured.¹⁰⁵

- 2.4 The HMICRFS outlined the case of a 72-year-old who was the victim of repeated anti-social behaviour and other crimes. Since 2017, eight of these reports had been recorded as crimes. Another four incidents had been reported but not recorded. The victim then reported that four young males had thrown eggs at his house, and that on several occasions someone had switched his electricity off using the outside junction box.¹⁰⁶
- 2.5 They additionally noted multiple offending of older victims, indicating that, '*from the 192 cases of crimes against older people that we examined, ... We found evidence*

¹⁰¹ <https://www.scotsman.com/news/hatred-turned-colin-norris-serial-killer-2478080>

¹⁰² http://news.bbc.co.uk/2/hi/uk_news/england/4918462.stm

¹⁰³ <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/harold-shipman-victims-list-who-14579587>

¹⁰⁴ <https://www.theguardian.com/uk/2011/mar/25/night-stalker-jailed-life>

¹⁰⁵ Further details available from Ian Cranefield

¹⁰⁶ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

that the victim had previously been the victim of a crime in 95 of the 196 cases, although we could not tell whether the victim had always been targeted because they were old. We also found that in 74 of 192 cases there was evidence that the perpetrator had previously offended against an older person.'

- 2.6 Green (2007) suggests that older people are increasingly becoming the objects of harassment on the streets of their own local communities. As in cases of disablist hate crime ... this abuse can be very damaging to victims and yet can go unrecognised for what it is, being labelled as 'regular' anti-social behaviour rather than the targeted harassment that it is.¹⁰⁷
- 2.7 The question arises: when an older person is the victim of an attack, what is the predominant characteristic that the perpetrator sees? Is it the gender of the victim, any disability they may (or may not) have, or their age? In some cases, there is clearly an age-related dimension (e.g. calling someone a "f**king old b**tard" or referring to a 'crumbly, senile old git' or 'a comatose old bag of bones'). In other circumstances it may be less obvious unless the wider context is considered e.g. the deliberate targeting of a residential care home for a sexual attack, or the deliberate targeting of houses with door ramps and grab rails, or the circulation of 'sucker lists' between scammers who target predominantly older victims.
- 2.8 Similar points are made by the University of Sussex report in relation to disability hatred where an interviewee asked '*Could we draw an inference from the fact that this has taken place in an area which clearly housed disabled people? That he's gone off his route looking for a particular type of victim? ... What's the demographics of the housing? Were we able to secure evidence that it was indeed for disabled people?*'¹⁰⁸
- 2.9 In reality, there may be a variety of perpetrator motivations that underlie the targeting of older people. These may include, for example, a belief that the person's age makes them an easier target, or a general lack of respect for, or dehumanising attitudes towards, older people. But we cannot dismiss the extent of ageism within society and apply other labels to motivation without clear justification. Hostility toward older people can be a very real part of why some older people become victims of crimes.
- 2.10 If we can accept the argument (and we should) that the law is not capturing behaviour directed at disabled people where there is a belief (whether true or not) that the victim's disability makes them an easier target – for example for financial or sexual exploitation - it should not be incompatible that a similar argument is valid in relation to age and older people.

¹⁰⁷ Garland, J. (2012) Difficulties in defining Hate Crime Victimisation, *International Journal of Victimology*, 18, 1, 25-37

¹⁰⁸ Walters, M., Wiedlitzka, S., Owusu Bempah, A. and Goodall, K. (2017) *Hate Crime and the Legal Process: options for Law Reform*, Brighton: University of Sussex

- 2.11 Certainly, there are types of crimes against older people that *'cannot be explained away by saying that the victim was simply vulnerable to abuse. Their perceived vulnerability is based on a prejudice that the offender holds towards the victim. Hence, evidence that shows that an offender purposively selects a perceivably vulnerable victim by reason of their protected characteristics is evidence of identity-based prejudice.'*¹⁰⁹
- 2.12 For example, the "doorkeeper" who moves in with an older person, or moves them in with themselves, on the promise of looking after them. They then isolate them and offer a single narrative and allow no other influences. There may be no telephone in the house, no friends or acquaintances in the area and no real ability to seek help. This is a variation of the 'mate crime' scenario often seen in relation to people with disabilities.
- 2.13 That is not to say that all crimes against older people should be considered as a hate crime. As Action in Elder Abuse (AEA) rightly point out such crimes can involve *'complex interpersonal and interfamilial relations'*, rather than hatred. But, even within those interpersonal and intrafamilial relations there can be situations in which very real hatred or hostility is demonstrated and to that extent AEA may not be doing justice to the complexity of the issues (noting the contradiction between their policy approach on this matter in Scotland, as opposed to England and Wales).
- 2.14 The case of Margaret Panting may be a good example. This was a 78-year-old woman from Sheffield who died after suffering "unbelievable cruelty" while living with relatives. After her death in 2001, a post-mortem found 49 injuries on her body including cuts, probably made by a razor blade, multiple bruising and cigarette burns. This case was the catalyst for the introduction of section 4 offence in the Domestic Violence Crimes and Victims Act 2005 of "causing or allowing the death of a child or vulnerable adult."¹¹⁰ Margaret had suffered a sustained series of assaults by family members over just a five-week period.
- 2.15 It could be argued that there is quite widespread and growing "resentment" of older people, on some levels with inter-generational tension (as suggested in the section on ageism). As younger people struggle to get on the job market and older people stay longer in work, or even return to work part-time, there is a sense that older people prolonging their independence has an adverse impact upon younger people discovering theirs.
- 2.16 In a family setting, there may be hostility arising from the older generation "sitting on" reasonable levels of wealth but living frugally, in comparison with younger members of the family who struggle to make ends meet or have debts. For many older people, it was a societal norm in the past to avoid debt and it was perceived as a matter of shame to have material things "on credit".

¹⁰⁹ Walters, M., Wiedlitzka, S., Owusu-Bempah, A. and Goodall, K. (2017) *Hate Crime and the Legal Process: options for Law Reform*, Brighton: University of Sussex

¹¹⁰ <https://www.hampshiresab.org.uk/learning-from-experience-database/serious-case-reviews/margaret-panting-sheffield/>

- 2.17 There can also be a perception that older people are not using their material resources wisely or properly. They are "undeserving" and holding onto their wealth, which should be made available to the rest of the family as soon as possible. These feelings can generate hostility and resentment, leading to greed and financial abuse.
- 2.18 Finally, there are instances of children who feel they have been deprived of love or have been mistreated as youngsters, "taking revenge" on their parents when they are older and more vulnerable, taking delight in dominating their lives, asserting control and "redressing the balance"
- 2.19 In a wider context the question arises: to what extent is it reasonable to infer hatred or hostility based upon the degree of cruelty or suffering inflicted on the victim? For example, 89-year-old Alec Taylor whose suppurating pressure ulcers had rotted the flesh right down to his bones was locked away in an upstairs room of the care home in which he lived, in too much pain to move and too much confusion to cry out. For the last four months of his life, Alec saw no one except the proprietor of the home, Souren Ramdoo as he attempted to clean Taylor's wounds by hacking at the skin around the sores with office scissors and ripping out his rotting flesh, wearing gloves he had used to scoop faeces off the sheets moments earlier.¹¹¹
- 2.20 In such cases, the motivation cannot be explained on the basis of vulnerability alone. Vulnerability may have created the dependency circumstances that placed Alec Taylor in the care home, but it cannot explain such apparent premeditated cruelty. And there are many examples of such cruelty and callousness in relation to older people, where vulnerability or opportunism alone cannot provide an explanation of motivation. Hostility often manifests as an attitude of contempt with a conscious intention to do harm. This intention manifests in different ways. For instance, a person might express it covertly or through gossip and slander or more explicitly through verbal or physical attacks.¹¹²
- 2.21 As a further example, 84-year-old Freda Jobson did not have decision-making capacity and was bed bound with pressure sores. A hidden camera showed carers mimicking the old woman's groaning as they laughed and swore, asking her if she was a witch and whether she had ever practiced black magic. One 'carer' removed a bandage used to cover a pressure ulcer on the woman's elbow and wrapped it around her head while laughing at her. The carers in question admitted their actions to the police and in court.¹¹³
- 2.22 In their submission to the Independent review of Hate Crime legislation Action on Elder Abuse argued that, while crimes against older people which are committed due to the victim's perceived vulnerability comprise a much bigger problem than crimes motivated by hatred or prejudice due to the person's age, they were nevertheless aware that the latter type of crime can also be an issue for many older people. They

¹¹¹ <https://www.theguardian.com/society/2001/feb/18/socialcare.longtermcare>

¹¹² <https://exploringyourmind.com/hostility-in-a-relationship-is-the-prelude-to-the-end/>

¹¹³ <https://www.dailymail.co.uk/news/article-3586556/Are-witch-witch-Shocking-secret-CCTV-shows-cruel-carers-taunting-frail-dementia-sufferer-84-left-horrific-stinking-bed-sores-looked-like-raw-meat.html>

often received calls to their Helpline regarding verbal abuse, harassment or general anti-social behaviour from younger people, with many older people telling the charity that they believed they were being targeted because of their age.¹¹⁴

- 2.23 Action on Elder Abuse further explained, 'We believe these types of crimes are much different to the complicated (and often long-term) dynamics of other types of abuse, such as elder or domestic abuse, and therefore believe that statutory aggravations are the best model for such crimes. Such an approach also creates consistency with other forms of hate crime, and clarity for both the public and prosecutors.'¹¹⁵
- 2.24 The difficulty which emerges from all these sources is that, although some offences committed against older people are motivated by, or demonstrate, hostility, the majority appear to be committed because of the frailty and vulnerability of the older victims.¹¹⁶ However, perpetrators of crimes against older people intentionally select their victims because of the victim's status as members of the elderly population.¹¹⁷
- 2.25 *(A) vulnerability- based approach acknowledges the heightened level of risk posed to certain groups or individuals that can arise through a complex interplay of different factors, including hate, prejudice, hostility, unfamiliarity, discomfort or simply opportunism or convenience.*¹¹⁸
- 2.26 However, despite the argument that it can be difficult not to conclude that hostility must form part of the justification for some criminal behaviour toward older people, (as pointed out in 2.13 above), in the current legal structure of hate crime the presence of hostility can be more difficult to prove unless the perpetrator uses specific words – despite the context and criminal actions. But, as indicated elsewhere, people are more inclined to use ageist terminology in a way that they may not with other derogatory terms, older people are perceived as easy targets, and ageism itself has become so normalised that hateful acts are not perceived as criminal.
- 2.27 The two issues of age and vulnerability are intertwined – in a similar way to that of disability related crime and this needs to be considered and addressed. The CPS acknowledge this in their policy statement. '*We recognise that older people are often targeted because of their age and a perception that they are vulnerable. This can*

¹¹⁴ Scottish Govt. (2018) Independent Review of Hate Crime Legislation in Scotland Final Report Edinburgh: Scottish Government

¹¹⁵ Action on Elder Abuse (2018) *Submission to the Independent Review of Hate Crime Legislation in Scotland*, London: Action on Elder Abuse

¹¹⁶ Scottish Govt. (2018) *Independent Review of Hate Crime Legislation in Scotland Final Report*, Edinburgh: Scottish Government

¹¹⁷ Hull, H-G (2009) The Not-so-golden years: why hate crime legislation is failing a vulnerable ageing population, *Michigan State Law Review*, Vol. 2009, 2, 2009

¹¹⁸ Chakraborti, N. and Garland, J. (2012) Reconceptualising hate crime victimisation through the lens of vulnerability and difference, *Theoretical Criminology*, 16, 4, 499-514

have a devastating impact on the victim because they are being targeted for a personal characteristic.’¹¹⁹

- 2.28 The University of Sussex report (already referred to above) also acknowledged this in relation to disability hate crime when they noted that *‘Both academics and practitioners have highlighted how the perceived vulnerability of the victim is intrinsically connected to the prejudices which perpetrators demonstrate towards them’*. The complex relationship between perceived vulnerability and hostility continues to confuse practitioners and inhibits the successful prosecution of an offence as a disability hate crime.¹²⁰
- 2.29 Additionally, in the Independent Review concerning Hate Crime legislation (Northern Ireland) the Commissioner for Older People for Northern Ireland maintained that targeting a group due to an actual or perceived weakness is a form of contempt or hatred for that group. An individual who commits an offence against an older person wholly or partially because they consider that older person to be ‘easy pickings’ on the basis of their age, would constitute evidence of an attitude of hostility based on active disdain for members of that group.¹²¹
- 2.30 The final report into the review of hate crime in Scotland draws out this complexity, pointing out that perceived vulnerability cannot be disentangled from the judgements that offenders make about the worthiness of their victim’s value as human beings. Victims are ‘selected’ because their ‘difference’ means that they are deemed to be somehow of less value, and their worth as equal members of society is therefore diminished. The perceived vulnerability is based on a prejudice that the offender holds towards the victim. Hence, evidence showing that an offender purposively selects a perceivably vulnerable victim by reason of their protected characteristics is evidence of identity-based prejudice.¹²²

Age or disability

- 2.31 However, a fundamental point is that the most self-evident characteristic of an older person is primarily their age, not any disability they may have. Ageism is a major factor in this instance. By virtue of their perceived age, the older person evidences frailty (or assumed frailty) regardless of whether they display an obvious disability. How we think and feel towards older adults can influence how we behave towards and interact with them.¹²³ *“[O]ften perpetrators are influenced equally or more*

¹¹⁹ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

¹²⁰ Walters, M., Wiedlitzka, S., Owusu Bempah, A. and Goodall, K. (2017) *Hate Crime and the Legal Process: Options for Law Reform*, Brighton: University of Sussex

¹²¹ Hate Crime Review Team (2020) *Hate Crime legislation in Northern Ireland*, Independent Review, Final Report, Belfast: Department of Justice (Northern Ireland)

¹²² Scottish Govt. (2018) *Independent Review of Hate Crime Legislation in Scotland Final Report*, Edinburgh: Scottish Government

¹²³ Centre for Ageing Better (2020) *Dodderly but dear? Examining age related stereotypes*, London: Centre for Ageing Better

strongly by situational factors (including social norms that identify particular groups as suitable victims) than by their own attitudes towards the target group."¹²⁴

- 2.32 Action on Elder Abuse articulated this well in their 2018 submission to a CPS consultation. *'We agree that not all older people are vulnerable. But the issue is about the increased potential of an older person to be a target of crime because of societal perceptions rather than personal realities, and also the particular circumstances of the criminal situation. An 80-year-old man may not be vulnerable in the normal course of life, but his age may create an assumed perception of vulnerability in the eyes of a perpetrator and he may find himself more vulnerable to some types of crime by virtue of his age, including a reduced ability to defend himself'*.¹²⁵
- 2.33 Where the law currently fails is in this 'disability test' in relation to older people. A hate crime case can only be prosecuted if the older victim evidences a disability (or another current protected characteristic). *'In relation to crimes against older people there is no statutory equivalent to sections 145 or 146 of the Criminal Justice Act 2003 (racial or religious hostility or hostility based on sexual orientation, transgender identity or disability). However, where there is evidence that the older victim has a disability, careful consideration should be given as to whether or not the case should be flagged and prosecuted as a disability hate crime'*.¹²⁶ This means that the ageist hatred/hostility element cannot be currently appropriately addressed. This point is well articulated by Byhovsky who suggests, *'[I]t makes no sense to protect a frail individual from physical and psychological harm because the individual is a woman or African American, or Jewish, but not to protect the frail individual who is uniquely vulnerable due to age'*.¹²⁷
- 2.34 One contributor to the Sussex report explained: *"In a vulnerability case, to argue s.146 would apply, we would have to have some sort of clear evidence that it was more than just vulnerability. So, for instance if you had an elderly person who was robbed, the robbery is complete, and then the defendant has the victim's purse, it's done, and then he kicks the walker, and then makes some sort of adverse comments on social media; then you could argue that that amounts to a s. 146 case and therefore should receive something on top."*¹²⁸
- 2.35 Another contributor stated: *"[T]here is a tendency that once a flag's been put up, to stop looking wider. And part of the hate crime checks we do, we actually look at the crimes against older persons, because sometimes you'll find other hate crime strands within that. So, is there a hidden disability offence? Is this based on dementia or some other aspect that you've actually got a disability crime linked in there? And*

¹²⁴ See: Wang, L-I (1999) "The Complexities of Hate", *Ohio State Law Journal*, Vol. 60, 1999, p. 807.

¹²⁵ Action on Elder Abuse (2018) *Submission to the CPS consultation on prosecuting crimes against older people*, London: Action on Elder Abuse

¹²⁶ Crown Prosecution Service (2020) *CPS policy on prosecuting crimes against older people*, London: CPS

¹²⁷ Byhovsky, I. (2018) *Financial Crimes against the Elderly as a Hate Crime in New York state*, 81 *Albany Law Review* 1139

¹²⁸ Walters, M., Wiedlitzka, S., Owusu-Bempah, A. and Goodall, K. (2017) *Hate Crime and the Legal Process: Options for Law Reform*, Brighton: University of Sussex

*we've had cases involving abuse of elderly patients in care homes where the investigation by the police hadn't identified that aspect. We had. We then flagged that up as a hate crime case and got significant sentences as a result; but again, that information was shared with the police and used in training exercises. But that shows the complexity.*¹²⁹

- 2.36 The question arises as to the value of a hate crime approach that does not address appropriately the ageist motivation of a perpetrator. The criminal who kicks the 80-year-old man using an ageist expletive gets treated differently from the criminal who kicks the 80-year-old man using an ageist AND a disability related expletive, leaving prosecutors struggling to find 'an angle' on which to pin the crime.
- 2.37 Sherry (2010: 103) argues that there is a 'strong correlation' between age and disability and yet the commonalities and links between elder abuse and disablist hate crime often go uncommented upon. Another similarity between elder abuse and more recognised forms of hate crime is that it is vastly under-reported, whether this is due to it often being 'hidden' within institutions, or the physical frailty, low self-confidence or vulnerable/risky situation that an older person may find themselves in which may impact upon their ability or willingness to speak to someone in authority (Wolhuter et al., 2009).
- 2.38 In this context it is quite possible to argue that a perpetrator may assault an older person because they consider them to be an easy target, because they have a disability, and because they see them as old and therefore not deserving of respect or equality. It becomes an issue of multiple disadvantage, but age dominates the context and circumstances.

Discriminatory selection and prejudice

- 2.39 Perpetrators of hate crime select their victims as individuals who are different from themselves and who they either hold prejudices against, or who they feel are worth less in society than others. Vulnerability or perceived vulnerability (the older person may look or be considered vulnerable because of their age) is a key part of the context of hate crime. To use the words of the Office for Democratic Institutions and Human Rights (ODIHR, 2009: 48), (hate crime is) where the offender '*selected victims based on prejudices or stereotyped information about victim vulnerabilities.*'¹³⁰
- 2.40 The issue of prejudicial selection is an important one in terms of older people, because it focuses on how perpetrators choose their victims. In this context hatred or hostility may have a lesser role, with a greater emphasis placed on prejudice or stereotyped information about victim vulnerabilities. *When a hate crime law requires "hostility," it requires law enforcement to make an assessment of an offender's*

¹²⁹ Walters, M., Wiedlitzka, S., Owusu Bempah, A. and Goodall, K. (2017) *Hate Crime and the Legal Process: Options for Law Reform*, Brighton: University of Sussex

¹³⁰ Chakraborti, N. and Garland, J. (2012) Reconceptualising hate crime victimisation through the lens of vulnerability and difference, *Theoretical Criminology*, 16, (4), 499-514 (Available from: <https://doi.org/10.1177/1362480612439432>)

*mental state — an exercise that may be difficult and one for which most law enforcement are not trained.*¹³¹ Additionally, a *'victim who is targeted because the offender assumes that some protected characteristic of the victim makes him/her especially vulnerable to crime is likely to experience the same trauma as a victim who is targeted because the offender actually hates that characteristic.'*¹³²

- 2.41 The Law Commission consultation has acknowledged this form of discriminatory selection as one approach that would address some of the difficulties experienced in prosecuting disability hate crime (and this would also benefit older victims too). But they point out that this would weaken the 'conscious animus' element of hate crime, while condemning some perpetrators as 'bigot's' when they might be better characterised as cynical or opportunistic. To some extent this is about the balance between the words 'hatred, hostility and prejudice' and the intensity of their meanings, as well as evaluating what might be meant by cynical or opportunistic crimes in this context.
- 2.42 For example, an opportunistic crime whereby a perpetrator notices a bag in a shop that is momentarily left unguarded and steals a purse, is not the same as a perpetrator who notices an old woman at an ATM, pushes her to the ground and steals her money. The cynical exploitation of a business¹³³ cannot be equated with the cynical exploitation of 80-year-old people.¹³⁴ It is the targeting of a person, an individual, for their personal age characteristic- plus the impact - which delineates the two types of crimes.
- 2.43 In this context, the proposal by the Law Commission to introduce a prejudice-based test, where the perpetrator is motivated by hostility *or prejudice* toward age (as a protected characteristic) would address a number of the crimes that older people experience, including fraud and those where a relationship is established that is then exploited.

The Criminal Justice system

- 2.44 The HMICRFS in their 2019 report concluded that *'crime against older people isn't well understood, despite the vulnerability of older people and the importance that society attaches to looking after people in their old age. There has been little police analysis of the problem, including the links to disability hate crime and domestic abuse. We found that police forces had only a superficial understanding of the problems, although all had recognised that fraud was an increasingly common concern for older victims.'*¹³⁵

¹³¹ OSCE (2009) *Hate Crime Laws; a practical guide*, London: OSCE

¹³² OSCE (2009) *Hate Crime Laws; a practical guide*, London: OSCE

¹³³ <https://www.bbc.com/news/uk-england-lancashire-18523579>

¹³⁴ <https://www.dailymail.co.uk/news/article-3333494/Elderly-couple-forced-spend-final-days-apart-63-years-marriage-carer-raided-savings.html>

¹³⁵ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

- 2.45 This lack of analysis obviously makes it difficult to consider the prevalence of crimes, or the nature of crimes, particularly in relation to Hate Crime itself. This is made more difficult by the elder abuse label that is often placed on such crimes, with the UK prevalence study in 2007 indicating that only 6% of respondents reported abuse to the police.¹³⁶
- 2.46 Action on Elder Abuse highlighted the disparity between ‘abuse crimes’ and ‘criminal crimes’ when they made the point that *‘some 43% of referrals (to Adult Safeguarding) were substantiated by investigation, which would suggest that there were over 28,000 older people who were identified as experiencing physical, sexual, psychological, or financial abuse, and neglect i.e. potential crimes. ... the obvious question arises as to why there is such a gap between 28,000 substantiated cases of what are crimes in England, but only 3,317 referrals (11.8%) by the police to the CPS (England and Wales)?’*¹³⁷ Such a wide variation cannot be easily explained away by the claim that victims are reluctant to prosecute, because that is (theoretically) covered by CPS policy.
- 2.47 This point was reinforced in their submission to the Independent Review of Hate Crime Legislation in Scotland, when they noted that *‘by failing to consider the criminal aspects of harm, abuse and exploitation of older people (or only imposing lenient or deferred sentences), we are in danger of sending a message to perpetrators and would-be perpetrators that vulnerable older people continue to be an ‘easy target’ and that crimes against older people will not be harshly prosecuted.’*¹³⁸
- 2.48 This is not a failing unique to the UK. In America it has been noted that, *‘The consequence of a known relationship between victim and offender, when evaluated through Adult Protection Services, resulted in less investigation for a crime, less physical examination for the elder, and less referral to the prosecutor’s office.’*¹³⁹
- 2.49 The reasons why criminal cases of abuse are not prosecuted merits investigation, and these reasons may be varied, but there is some evidence to suggest that the system itself operates against proceeding with a criminal case, in part because of the ‘social working’ of crimes within the adult safeguarding structure. An example would be that of Freda Jobson.
- 2.50 Freda Jobson did not have decision making capacity and was bed bound with pressure ulcers. A hidden camera showed carers mimicking the old woman’s groaning as they laughed and swore, asking her if she was a witch and whether she had ever practiced black magic. One ‘carer’ removed a bandage used to cover a

¹³⁶ Action on Elder Abuse (2017) *Elder Abuse is a crime, now let’s make it one*, London: Action on Elder Abuse

¹³⁷ Action on Elder Abuse (2017) *Elder Abuse is a crime, let’s make it one*, London: Action on Elder Abuse

¹³⁸ Action on Elder Abuse (2018) *Submission to the Independent Review of Hate Crime Legislation in Scotland*, London: Action on Elder Abuse

¹³⁹ Burgess, A. W. (2006) *Elderly victims of sexual abuse and their offenders*, Washington: US Department of Justice

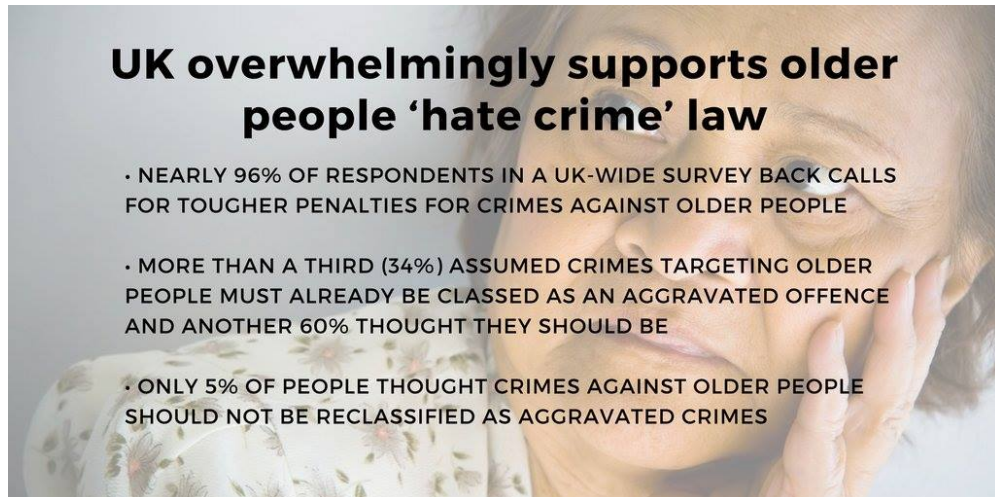
bedsore on the woman's elbow and wrapped it around her head while laughing at her. The carers in question admitted their actions to the police and in court.¹⁴⁰

- 2.51 Despite the fact that these actions constituted a crime under section 44 of the Mental Capacity Act 2005, the police decided to issue a caution rather than pursue a prosecution. Action on Elder Abuse made representations to the Chief Constable, the Chair of the local Adult Safeguarding Board, and the Attorney General, on behalf of the family. After several months and repeated representations, the police reversed their decision and placed the case with the Crown Prosecution Service, who eventually decided to prosecute. Twelve months after AEA first raised the case, in April 2016, the carers were found guilty, received suspended sentences and were required to pay compensation.
- 2.52 In justifying the decision not to pursue a criminal case the adult safeguarding board explained that *'the outcome was acceptable to the Board, it was in-line with the Board's aims in that it protected Mrs Jobson and also prevented any likelihood of it happening again as the workers will not be allowed to work in any caring role and indeed would have a criminal record due to the cautions... the police gave me their rationale for their decision to caution rather than prosecute. It is not inevitable that an offence of abuse or neglect will automatically result in a prosecution, it is subject to the circumstances surrounding it and in pure safeguarding terms this overall outcome was proportionate and achieved as much as a court action would have done to protect adults at risk of harm.'*¹⁴¹
- 2.53 The focus was on stopping the abuse and protecting the victim, which is a legitimate aim of adult safeguarding. But it ignored the responsibility to hold the perpetrators legally to account for their actions.
- 2.54 Interestingly, more than a third of the public believe that a crime against an older person already constitutes an aggravated offence. In February 2017, AEA conducted a poll of 3,183 people across the UK to assess attitudes to making elder abuse a hate crime. Almost 95% of respondents considered that the abuse of older people should be an aggravated offence similar to hate crimes based on race, religion or disability. 96% thought perpetrators should receive tougher sentences than typically handed down by courts at present, just 1 in 12 thought the government did enough to protect older victims of crime, and 95% of people agreed or strongly agreed that older people were specifically targeted for abuse due to their perceived physical frailty or mental vulnerability.¹⁴²

¹⁴⁰ <https://www.dailymail.co.uk/news/article-3586556/Are-witch-witch-Shocking-secret-CCTV-shows-cruel-carers-taunting-frail-dementia-sufferer-84-left-horrific-stinking-bed-sores-looked-like-raw-meat.html>

¹⁴¹ Action on Elder Abuse (2017) *Elder Abuse is a crime, now let's make it one*, London: Action on Elder Abuse

¹⁴² Action on Elder Abuse (2017) *Elder abuse is a crime, let's make it one*, London: Action on Elder Abuse



Systemic limitations of the current criminal justice system

2.55 There are a number of systemic challenges to achieving prosecutions of crimes against older people.

- a) Police: cases (particularly where they have been labelled as elder abuse) may not get the priority they warrant, with police cautions being used as a significant option. This can be coupled with a failure to formally identify vulnerability or trigger special measures.
- b) CPS: not recognizing vulnerability or the hate crime facets; not implementing policies on prosecuting crimes against older people; not utilising special measures, with no dedicated monitoring to ensure consistent application.
- c) Courts: a failure to adequately sentence, with limited recognition of the vulnerability aspect and hence limited use of enhanced sentencing. While there are some notable exceptions involving prison terms, there are too many instances of community services, suspended sentences and fines.

The reality is that, although some crimes against older people such as assault and fraud are already found in the criminal law, the attitudes and policies of police, criminal justice and other officials mean the circumstances of many abused and neglected older adults are not treated as crimes.¹⁴³

2.56 The HMICRFS noted this in their inspection, '*In the forces that we visited, it made no apparent difference to older victims of crime that the force had stated that such crimes would be treated as hate crimes. Since the approach to dealing with crimes motivated by age was underdeveloped, the forces had no better understanding of the problem than those that had not taken this approach. In the 192 cases that we examined, 72 had a victim who was disabled in some way. In these cases, we cannot say that the motivation of the perpetrators was due to hostility towards the disability*

¹⁴³ Webb, E. (2013) *The mistreatment of older people: is it time to legislate against abuse*, Available from: <https://theconversation.com/the-mistreatment-of-older-people-is-it-time-to-legislate-against-abuse-14922>

of the victims. However, the links between older people and disability hate crime are obvious.’¹⁴⁴

- 2.57 In view of the above, some caution needs to be used when considering current prosecution rates in relation to crimes against older people, as a measure of relative prevalence.
- 2.58 The HMICRFS inspection of police forces in relation to crimes against older people confirmed this evaluation and identified:
- a) The Code of Practice for Victims of Crime makes it clear that the police should conduct assessments of victims’ needs and whether they need any support. In this inspection, we found that either this had not taken place, or that some elements of assessment had sometimes taken place, but not in any standard way. Vulnerable victims weren’t being treated according to their needs because of these omissions and errors. This had implications throughout the criminal justice system, from the decisions made about how the case should be investigated through to the provision (or lack of it) of special measures in court.¹⁴⁵
 - b) We found that flagging by the police and the CPS is not good enough. This makes it harder for the police and the CPS to properly understand the nature and extent of crimes against older people....We found that the police and the CPS don’t know enough about the extent, nature and trends in crimes against older victims.¹⁴⁶
 - c) We have concluded that police investigations into crimes against older people are often not good enough, and there is an urgent need to make improvements. Overall, the quality of service of the CPS when considering the victim as an older person was rated as good in only 41 out of 96 cases. For cases involving older people, we found that, in 40 of the 88 relevant cases examined, prosecutors had not considered all the factors that might affect the case, including the CPS crimes against older people policy.¹⁴⁷
- 2.59 Research which Action on Elder Abuse carried out in England and Wales in 2017, found that in relation to crimes involving older people:
- a) of those that are reported, the majority are either not acted upon, or result in cautions, or suspended sentences.

¹⁴⁴ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

¹⁴⁵ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

¹⁴⁶ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

¹⁴⁷ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

- b) they found that the number of successful criminal convictions in 2015/16 (3,012) represented just 0.7% of total prevalence of elder abuse.
 - b) out of 28,187 adult safeguarding cases involving older people (substantiated by local authorities as genuine safeguarding concerns), only 12% (3,317) were referred by the police to the prosecution service.¹⁴⁸
 - c) Two police forces said they had recorded no elder abuse or neglect cases in a whole year. One had made 21 referrals to the Crown Prosecution Service (CPS) And one force that had investigated 76 elder abuse or neglect crimes had issued 76 police cautions, with not one single case reaching court.¹⁴⁹
- 2.60 A recent study in Northern Ireland examined outcomes (criminal sanctions) in cases involving victims aged 55 or over, compared with victims aged 20 to 54 years, and found a strong, negative correlation between age and outcome rate over the period 2007/08 to 2017/18.¹⁵⁰
- 2.61 AEA analysed prosecutions for crimes against older people, using CPS data and identified that the main offence categories that related to prosecutions were offences against the person (27.4%), Sexual offences (1.9%), Burglary and Robbery (29.4%), Theft and handling (17.1%), and fraud and forgery (12.3%).
- 2.62 This can be compared with the adult safeguarding data for the same period which showed that referred abuse was physical abuse (26.8%), sexual abuse (5.3%), psychological abuse (15.3%), financial abuse (18.2%), and neglect (29.6%). It is worth noting the disparity between 5.3% of sexual abuse referred to adult safeguarding and 1.9% of sexual offences prosecuted. While there may be a number of valid reasons why sexual offences are not prosecuted, this is a significant difference.¹⁵¹

Barriers to interacting with criminal justice systems

- 2.63 Bows has argued that criminal justice policy and practice have been clearly identified as the primary issues hindering prosecutions and convictions for abuse and violence of older people (and crimes against older people more generally), rather than problems with the law.¹⁵² However, the situation is more complex.
- 2.64 Chakraborti, Garland and Hardy have pointed to a range of factors which influence victims' reluctance to report hate crimes to police. These include: the time required to report a hate crime – particularly for victims with work and caring commitments; and the degree of courage and resilience needed to share one's traumatic experience with a stranger.

¹⁴⁸ Action on Elder Abuse (2018) *Submission to the Independent Review of Hate Crime Legislation in Scotland* 2018 London: Action on Elder Abuse

¹⁴⁹ Action on Elder Abuse (2017) *Elder Abuse is a crime, let's make it one*, London: Action on Elder Abuse, September 2017

¹⁵⁰ Brown, K. J., & Gordon, F. (2019). Older victims of crime: Vulnerability, resilience and access to procedural justice. *International Review of Victimology*, 25(2), 201-221. <https://doi.org/10.1177/0269758018791426>

¹⁵¹ Action on Elder Abuse (2017) *Elder abuse is a crime, now let's make it one*, London: Action on Elder Abuse

¹⁵² Bows, H. (2020) Violence and Abuse of Older People: a review of Current Proposals for criminalisation, *Criminal Law Review*, 10: 877-894

- 2.65 The University of Sussex report suggests other reasons why certain types of hate crime are not recorded and prosecuted including that certain groups may be less likely to report incidents to the police. For instance, many victims of disability hate crime may not know that they have been the victim of a hate crime, or they may not have access to a telephone or the internet to report; this is especially the case where a carer or relative is the perpetrator of the (hate) crime.¹⁵³
- 2.66 The Law Commission consultation report additionally lists negative attitudes toward the police, crimes not being treated with the gravity they deserve, belief that the incident would not be recorded, perceptions about not being taken seriously, a reluctance to go through the criminal justice system, victims not recognising the hate crime, and retaliatory violence, as potential factors involved.
- 2.67 These reasons are clearly related to the feelings, experiences, confidence and circumstances of the victims. This is similar to the conclusions reached by the HMICRFS in relation to crimes against older people and indicated that their research and inspection had identified:
- social isolation, and/or a lack of access to trusted people to tell;
 - not knowing how to report a crime;
 - not recognising that what has been experienced is a crime;
 - a perception of not wanting to be a burden or cause a problem (this came through very strongly in our interviews with victims);
 - mental ill health or other cognitive problems;
 - fear of loss of their home or being placed into care;
 - fear of retribution, especially if the perpetrator is a carer;
 - shame, particularly if the perpetrator is a family member, or if they have been duped into giving away money or valuable possessions; and
 - not being believed, or a fear of not being believed.¹⁵⁴
- 2.68 Action on Elder Abuse have pointed out that *'despite the fact that crimes against (older people) are a growing problem, we believe there are a number of significant barriers to prosecution of these types of crime. In the first instance, many older people are unwilling or unable to report crimes against them to the police (especially as the vast majority of elder abuse cases are committed by family members).'*¹⁵⁵
- 2.69 They added that one of the major problems in under-reporting among older people was a fear of the (likely) consequences. This included a fear that they would be seen as being unable to cope (and therefore feared they might be placed in a care home), fear of what the perpetrator might do, fear of being unable to cope if they were dependent on the perpetrator for basic care needs, fear of not being believed, and

¹⁵³ Walters, M., Wiedlitzka, S., Owusu Bempah, A. and Goodall, K. (2017) *Hate Crime and the Legal Process: Options for Law Reform*, Brighton: University of Sussex

¹⁵⁴ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

¹⁵⁵ Action on Elder Abuse (2018) *Submission to the Independent Review of Hate Crime Legislation in Scotland*, London: Action on Elder Abuse

fear of loneliness. The latter is a significant problem among many older people given that perpetrators are most likely to be family members, this can include fear of partners/spouses leaving them, and children, grandchildren and others no longer visiting.¹⁵⁶

- 2.70 Older victims may be reluctant to report a hate crime out of a fear that they will be re-victimized, that law enforcement agencies will fail to respond appropriately; or, they may fail to report the crime because they feel ashamed or humiliated for being victimized.¹⁵⁷
- 2.71 Only a minority of fraud victims report their experience. Among people aged 65+, a full two-thirds (64%) targeted by fraudsters didn't report it to an official channel such as Action Fraud, the police, a bank or local authority. A third (36%) of those targeted confided in friends and family, and more than a fifth (22%) admitted they didn't tell anyone at all because they felt too embarrassed. Of the minority who do report, available support is inconsistent across the country.¹⁵⁸
- 2.72 Age UK identified these low reporting rates as a challenge. In their polling, one in ten (11%) older people targeted by a scam reported it to the police, with less than one in twenty (3%) reporting to Action Fraud.¹⁵⁹
- 2.73 None of the above relates to 'criminal justice policy and practice', but all of it is in keeping with the experiences of other groups who experience hate crime. And it is coupled to the additional systemic challenges identified in 2.55 above, with an obvious impact on crime figures.

Violence against Women

- 2.74 There are at least three perspectives to consider when seeking to understand violence against older women. Each is linked to a different definition of violence and assumptions regarding measurement, prevention of violence and other interventions. The three frameworks are: older adult mistreatment, older adult protection, and intimate partner violence.^{160 161 162} The older adult mistreatment framework is informed by social gerontology and understands violence as a form of elder abuse, focusing on age as the key and primary vulnerability to exposure to

¹⁵⁶ Action on Elder Abuse (2018) *Submission to the Independent Review of Hate Crime Legislation in Scotland*, London: Action on Elder Abuse

¹⁵⁷ Hull, H-G. (2009) The Not-so-golden years: why hate crime legislation is failing a vulnerable ageing population, *Michigan State Law Review*, Vol. 2009, 2, 2009

¹⁵⁸ Age UK (2018) *Applying the Brakes, Slowing and stopping fraud against older people*, London: Age UK March 2018

¹⁵⁹ Age UK (2018) *Applying the Brakes, Slowing and stopping fraud against older people*, London: Age UK March 2018

¹⁶⁰ Brownell P. (2014) Neglect, abuse and violence against older women: definitions and research frameworks (Review article). *South Eastern European Journal of Public Health*, 2014:1.

¹⁶¹ UN Department of Economic and Social Affairs (2013) *Neglect, Abuse and Violence against Older Women. Report of an Expert Meeting*, New York: United Nations, 2013.

¹⁶² Brownell P. (2016) A reflection on gender issues in elder abuse research: Brazil and Portugal. *Cien Saude Colet* 2016;21:3323–30.

violence. The older adult protection framework understands violence specifically within the context of caregiving and institutional arrangements, where older adults' vulnerability to violence is a result of reliance on caregivers. And the intimate partner violence (IPV) perspective adopts the definition of IPV used for women and girls below 50, and seeks to expand understanding of sexual, physical and psychological violence perpetrated by partners (and former partners) that older women may experience.¹⁶³

- 2.75 The elder abuse (older adult mistreatment) perspective has traditionally lacked understanding of the gendered nature of age-related vulnerabilities, for example, that women are less likely to have adequate pensions than men and that older women are more likely than older men to be financially dependent on family members.^{164 165 166} (International policy frameworks, including the Madrid International Plan of Action on Ageing, recognise that older women's vulnerabilities are compounded by societal discrimination – including sexism, poverty and lack of access to legal protections.)¹⁶⁷
- 2.76 The older adult protection framework tends to focus on vulnerability as the primary facet of old age, and hence the cause of the abuse rather than the means by which an older woman might be accessed and exploited. It positions abuse crimes within a social policy construct, rather than a criminal justice one, and it operates in isolation from the knowledge and experiences of wider gender-based violence. Instead it positions criminal care acts as failures in care standards and adopts a welfare orientation.
- 2.77 Further, the intimate partner violence (IPV) perspective focuses exclusively on gender related theories and aspects of violence without giving due regard to the unique issues associated with ageism and the marginalised position of older women in society.

Gender or Age or both:

- 2.78 It has been argued that '*the majority of elder abuse in England and Wales (and elsewhere) is actually domestic violence, most of which has 'grown old' rather than commencing in later life, or adult son/daughter violence towards parents. Gender is therefore the dominant risk factor, rather than age.*'¹⁶⁸

¹⁶³ Meyer, S.R, Lasater, M,E, García-Moreno, C. (2019) Violence against older women: a protocol for a systematic review of qualitative literature. *BMJ Open* 2019;9:e028809. doi:10.1136/ bmjopen-2018-028809

¹⁶⁴ Brownell, P. (2014) Neglect, abuse and violence against older women: definitions and research frameworks (Review article). *South Eastern European Journal of Public Health* 2014:1.

¹⁶⁵ Penhale, B. (1998) Bruises on the soul: older women, domestic violence and elder abuse. *Journal of Elder Abuse and Neglect: an International Journal*, 1998;8:16–30. (published online 2008)

¹⁶⁶ Crockett, C, McCleary-Sills J, Cooper B, et al. (2016) In: Bank TW, ed. *Violence against Older Women: Violence against Women & Girls Resource Guide*. Washington D.C: The World Bank, 2016.

¹⁶⁷ United Nations. (2002) Madrid International Plan of Action on Ageing. New York: United Nations.

¹⁶⁸ Bows, H. (2020) *Is more law the answer? Discussion Document* Durham: Durham University Law School

- 2.79 However, while the focus of the existing qualitative evidence-base is primarily on Inter Partner Violence in older age, it is unclear whether this research focus reflects the actual burden of IPV compared to other forms of violence against older women, and if the evidence-base currently adequately includes accounts of types of violence and perpetrators that are most significant in relation to older women. As such, further studies of violence against older women that are inclusive of any type of violence, by any perpetrator, or take an open-ended approach to older women's accounts of violence, are needed.¹⁶⁹
- 2.80 Consequently, the reality is that there is currently insufficient research into the nature of elder abuse and its relationship with domestic abuse to reach major conclusions about type and motivation, although it is reasonable to draw a number of significant comparisons based on what is known. However, such comparisons need to be approached carefully because there are differences between domestic abuse in later life and domestic abuse of younger women. The Safe Later Lives report in 2015 indicated that '*older women's markedly different experiences of domestic abuse compared with those in younger age groups were not adequately recognised.*'¹⁷⁰ Some evidence also indicates that older women experience different types of violence, for example, high levels of psychological violence and verbal abuse, compared to younger women's experiences of physical and sexual violence.¹⁷¹
- 2.81 Utilising data from Action on Elder Abuse (AEA)¹⁷² it can be shown that a significant proportion (64%) of elder abuse cases that were reported to their helpline were potentially domestic abuse (mirroring data in other countries too), although this conclusion is often based on where the abuse occurs rather than an in-depth analysis of the nature of the abuse itself.
- 2.82 However, while the strong emphasis on older women's experiences of IPV gives voice to the experiences of older women subjected to such violence and shows how it can persist over time, or begin 'de novo' in later life; some sites, perpetrators and types of violence against older women may be excluded from such a view, including that of violence enacted by other family members and/or non-family caregivers and also situations relating to older women living in institutional care.¹⁷³
- 2.83 According to AEA data,¹⁷⁴ half the perpetrators were sons and daughters, with 23% being partners. Meanwhile, the UK prevalence study¹⁷⁵ suggested that just over a

¹⁶⁹ Meyer, S.R, Lasater, M.E, García-Moreno, C. (2020) Violence against older women: A systematic review of qualitative literature. *PLoS ONE* 15(9): e0239560.

¹⁷⁰ SafeLives (2016) *Safe Later Lives: Older People and Domestic Abuse, Spotlights report*, London: Safe Lives

¹⁷¹ Meyer, S.R, Lasater, M.E, García-Moreno, C. (2020) Violence against older women: A systematic review of qualitative literature. *PLoS ONE* 15(9): e0239560.

¹⁷² Action on Elder Abuse (2004) *Hidden Voices*, London: Action on Elder Abuse and Help the Aged

¹⁷³ Meyer, S.R, Lasater, M.E, García-Moreno, C. (2020) Violence against older women: A systematic review of qualitative literature. *PLoS ONE* 15(9): e0239560.

¹⁷⁴ Action on Elder Abuse (2004) *Hidden Voices*, London: Action on Elder Abuse and Help the Aged

¹⁷⁵ O'Keefe, M., Hills, A., Doyle, M., McCreddie, C. Scholes, S., Constantine, R., Tinker, A., Manthorpe, J., Biggs, S. and Erens, B. (2007) *UK Study of Abuse and Neglect of Older People Prevalence Survey Report*, London: National Centre for Social Research, King's College London

third (35%) are partners, with a further third (33%) being other family members. We therefore need to be cautious when reaching conclusions as to the nature of this abuse, as data suggests that children and other family members have a greater role than may be generally acknowledged.

The groups of relatives who were identified as abusers in the AEA report are:

Type	%	Type	%
Son/daughter	50	Sibling	3
In-law	9	Partner	23
Parent	1	Niece/nephew	2
Other	11		

Source: *Hidden Voices, Action on Elder Abuse, 2004*

- 2.84 Older women have described that ageing diminishes their physical and emotional capabilities to cope with experiences of violence. This has been expressed in relation to various forms of violence—IPV¹⁷⁶, including violence perpetrated by a spouse due to dementia, violence in the context of a new relationship or second marriage, violence perpetrated by a mentally ill child, violence perpetrated by children-in-law, and elder abuse.¹⁷⁷
- 2.85 Research for the Welsh Government into the ‘Access to Justice’ pilot project indicated that *‘the overall gender profile of older victims differs from that normally found in police recorded statistics for domestic violence incidents covering all age groups. It is estimated that in any one year, in over 90% of recorded cases of domestic violence the victim is female (Hester, 2009: 2). In contrast, in the sample of victims of elder abuse over one quarter (27%) were men. When comparing male and female victims, a greater proportion of men (56%) than women (33%) experienced physical violence.’*¹⁷⁸
- 2.86 The research further indicated that *‘The most common types of abuse found were emotional and physical. Where the victim was female, in over one half of the cases (53%) the abuse was emotional and in just under one-third of cases it was physical. For males, physical abuse was more prevalent than emotional abuse and accounted for 54% and 43% of cases respectively where only one type of abuse was recorded.’*¹⁷⁹
- 2.87 A 2017 study suggested that psychological violence and economic abuse were the most prevalent forms of partner violence against older men and women, and alcohol

¹⁷⁶ Penhale, B. and Porritt, J. (2010) *Intimate Partner Violence and Older Women: UK report*, Sheffield: University of Sheffield (Available from: www.ipvow.org – which also contains reports from 5 other countries)

¹⁷⁷ Meyer SR, Lasater ME, García-Moreno C (2020) Violence against older women: A systematic review of qualitative literature. *PLoS ONE* 15(9): e0239560.

¹⁷⁸ Clarke, A., Williams, J., Wydall, S. and Boaler, R. (2012) *An Evaluation of the ‘Access to Justice’ Pilot Project*, Cardiff: Welsh Government Social Research

¹⁷⁹ Clarke, A., Williams, J., Wydall, S. and Boaler, R. (2012) *An Evaluation of the ‘Access to Justice’ Pilot Project*, Cardiff: Welsh Government Social Research

use, depression, low income, functional impairment and previous exposure to violence were associated with this violence among older men and women.¹⁸⁰ Forms of Interpersonal Violence in later life shifted from a higher prevalence of physical and sexual abuse during reproductive age, to a higher prevalence of forms of psychological abuse, with results indicating: ‘a shift from physical to non-physical forms of violence dominated late-life scenarios.’¹⁸¹

- 2.88 Patterns and types of Interpersonal Violence against older women were also described as shifting from predominantly physical violence experienced previously (at earlier points in the lifecourse), to neglect, psychological violence and economic abuse becoming more prevalent in later life.
- 2.89 The secondary analysis of the 2007 UK Prevalence study indicated that older people with an increased risk of mistreatment were likely to be female and separated or divorced (those who were widowed had a relatively reduced risk). This would suggest these are not ‘typical’ domestic abuse scenarios, which often includes former partners. They are also likely to have experienced depression, have a poor quality of life, and take regular medication.¹⁸²
- 2.90 Based on data from the Crime Survey for England and Wales (2018/19) Age UK extracted information relating to older victims under 75; (There is no data available on older victims over 75 years):¹⁸³
- around 180,000 older women aged 60-74 and 98,000 older men aged 60-74 were victims of domestic abuse in England and Wales in the past year.
 - Most victims of domestic homicides are female (67%) and perpetrators are male (81%).
 - Older people were as likely to be killed by a partner/spouse (46%) as by their adult children or grandchildren (44%).
 - Older people killed in their own home most commonly die as a result of stabbings (41%).

It is important to note that these statistics were collected before coronavirus and lockdown, which will have exacerbated the problems facing older victims.

¹⁸⁰ Warmling, D., Lindner, S.R and Coelho, E.B.S.(2017) Intimate partner violence prevalence in the elderly and associated factors: systematic review. *Cien Saude Colet* 2017;22:3111–25.

¹⁸¹ Yon, Y., Mikton, C., Gassoumis, Z.D, et al. (2019) The prevalence of self-reported elder abuse among older women in community settings: a systematic review and meta-analysis. *Trauma Violence and Abuse*, 2019;20.

¹⁸² Biggs, S., Erens, B. and Doyle, M. (2009) *Abuse and neglect of older people: secondary analysis of UK prevalence study*, London: Kings College London, National Centre for Social Research

¹⁸³ Age UK (2020) *No Age Limit: the blind spot of older victims and survivors in the Domestic Abuse Bill*, London: Age UK

- 2.91 Overall, a quarter of domestic homicides in the United Kingdom involve a victim aged 60 and over, even though this age group accounts for 18 percent of the population. There are also differences in the types of perpetrators that commit the offences – for example, more homicides are committed by family members.¹⁸⁴
- 2.92 Consequently, the evidence available about elder domestic abuse suggests a very complex situation that is different from what is traditionally known about the domestic abuse of younger women.
- 2.93 AEA have reported that there are three scenarios for elder domestic abuse that have come to their attention:
- a) domestic abuse grown old, where domestic abuse started earlier in life and persisted into old age;
 - b) some older people enter into abusive relationships late in life, the perpetrators being new spouses or intimate partners; and
 - c) late onset domestic abuse which begins in old age. There may have been a strained relationship or emotional abuse earlier that got worse as the partners aged.¹⁸⁵

There is no research that indicates the percentage of prevalence between these three scenarios, but it is often concluded that the first option is most frequent and it was this experience that was reflected in the Safe Later Lives Report.¹⁸⁶ And in the case of the majority of studies included in one systematic review, older women described shifting but continuous patterns of violence throughout the life-course, although a small sample of studies identified new relationships and dementia of an intimate partner as factors precipitating violence that commenced in later life.¹⁸⁷

- 2.94 However, it may be too simplistic to simply categorise elder domestic abuse as predominantly gender focused and to marginalise other characteristics. It has been argued that *'age combines with other identities resulting in a 'double jeopardy' whereby members of already marginalised groups are further stigmatised as they age.'*¹⁸⁸ Likewise, Penhale earlier determined at least three forms of jeopardy relating to the intersections between age, gender and abuse.¹⁸⁹ And the Safe Later Lives report indicates that older victims are significantly more likely to have a disability – for a third, this is physical (34%).¹⁹⁰ This is a reality that has been mirrored within existing hate crime scenarios: *'accounts of hate crime need to be more*

¹⁸⁴ Bows, H. (2018) Domestic Homicide of Older People (2010–15): A Comparative Analysis of Intimate-Partner Homicide and Parricide Cases in the UK', *British Journal of Social Work*, 49, (5), 1234-1253

¹⁸⁵ FitzGerald, G. (2018) Conference presentation: Elder Domestic Abuse, London: Action on Elder Abuse

¹⁸⁶ SafeLives (2016) Safe Later Lives: Older People and Domestic Abuse, Spotlights report, London: SafeLives

¹⁸⁷ Meyer SR, Lasater ME, García-Moreno C (2020) Violence against older women: A systematic review of qualitative literature. *PLoS ONE* 15(9): e0239560.

¹⁸⁸ Centre for Ageing Better (2020) *Doddery but dear? Examining age related stereotypes*, London: Centre for Ageing Better

¹⁸⁹ Penhale, B. (1999) Bruises on the Soul: older women, domestic violence and elder abuse, *Journal of Elder Abuse and Neglect: an International Journal* 11, 1, 1-22 – published online 2008

¹⁹⁰ SafeLives (2016) *Safe Later Lives: Older People and Domestic Abuse, Spotlights report*, October 2016

attuned to the intersectional nature of identity. For example, the harassment of lesbians may be caused by homophobia and by misogyny.¹⁹¹

- 2.95 Bows acknowledges this in relation to sexual violence, 'By examining the impacts of sexual violence on older people and the challenges in accessing support through a critical feminist gerontology lens, it can be argued that older survivors can experience a double disadvantage or "double jeopardy" (Mann et al., 2014, p. 20)¹⁹² rooted in ageism and sexism. The lack of awareness and acceptance of sexual violence in later life reflect ageist and sexist attitudes toward older people.'¹⁹³ More specifically she has previously observed that focussing solely on one characteristic ... is problematic and there is a need for research that is sensitive to the intersections between gender, age and other characteristics including disability and sexuality.¹⁹⁴ This observation is also clearly made in Penhale's work.^{195 196}
- 2.96 Older people should not be regarded as a homogenous group and they experience domestic abuse in a number of ways, not all of which are linked to ageing. However, as we age, we may become less able to stop the harmful behaviours and face more barriers to accessing support. In addition, older people may not recognise what they are experiencing as domestic abuse, they may have more concerns about sharing information considered to be private, and feel shame about the situation they are in.¹⁹⁷
- 2.97 Consequently, while it would be reasonable to conclude that a proportion of these crimes are targeted because of the gender of the victim, it is equally reasonable to conclude that a proportion are also about the age and also the disability of the victim i.e. multiple and intersecting disadvantages. Whichever may be the dominant characteristic that the perpetrator focuses upon may depend upon the circumstances of the individual perpetrator and/or crime. It is not possible to dismiss the element of age, not only because of the inherent ageism that influences societal views and perpetrator actions, but also because the old age of the victim is inevitably an intrinsic part of who they are and how they are physically perceived.

¹⁹¹ Chakraborti, N. and Garland, J. (2012) "Reconceptualizing hate crime victimization through the lens of vulnerability and 'difference'" *Theoretical Criminology* 16, (4), 499-514.

¹⁹² See also, Penhale, B. (1999) Bruises on the Soul: older women, domestic violence and elder abuse, *Journal of Elder Abuse and Neglect: an International Journal* 11, 1, 1-22 – published online 2008

¹⁹³ Bows, H. (2017) Practitioner views on the impacts, challenges and barriers in supporting older survivors of sexual violence, *Violence Against Women*, 24,9,1070-1090

¹⁹⁴ Bows H and Westmarland N. (2017) Rape of older people in the United Kingdom: challenging the 'real rape' stereotype, *British Journal of Criminology*, 57,1,1-17.

¹⁹⁵ Penhale, B. (2020) Gender Issues in Elder Abuse, in Phelan, A. (2020) (Ed), *Advances in Elder Abuse-Research, practice, legislation and policy*, London: Springer

¹⁹⁶ Penhale, B. (2018) Elder Abuse, Ageing and Disability, in Shah, S. and Bradbury-Jones, C. (2018) (Eds.) *Global Perspectives on Disability, Violence and Protection over the Life-course*, London: Routledge

¹⁹⁷ Age UK (2020) *No Age Limit: the blind spot of older victims and survivors in the Domestic Abuse Bill*, London: Age UK

Motivation of the perpetrator

- 2.98 As indicated in paragraph 2.13 above, even within interpersonal and intrafamilial relations there can be situations in which very real hatred or hostility is demonstrated, particularly in relation to actions or inactions by wider family members. This is not just about the exploitation of vulnerability, which is perhaps better viewed as providing the opportunity or circumstances of the crime, rather than the motivation.
- 2.99 Penhale makes a similar point when she noted that, '*while it is crucial that elder abuse is recognised as domestic abuse insofar as perpetrators (intimate partners or other family members) use coercive methods as a strategy for exercising control, there may be differences when considering causality.*' (Penhale, 2003).¹⁹⁸
- 2.100 In relation to older people, addressing oppression and discrimination involves recognising and tackling ageist ideologies, policies and practices that influence access to, and delivery of, support services. If practitioners are to create an empowering form of practice, then they need to appreciate that they may, albeit unwittingly, contribute to oppressive and discriminatory definitions of older service users (Wilson and Beresford, 2000). For example, this can occur when practitioners adopt a paternalistic approach towards older victims of domestic abuse because of their perceived vulnerability. Consequently, a welfare-based solution is sought and potential justice-seeking options are not explored with the older person (Clarke *et al.*, 2016). This can give rise to issues of inter-generational equity or inter-generational justice (Lowenstein, 2009).¹⁹⁹
- 2.101 In their recent report on Domestic Abuse, Age UK state, '*We have seen a worrying increase in cases of adult children shutting their elderly parent away, not allowing them to enter certain rooms in the house, limiting their access to food, medication, fresh air and contact with friends.*'²⁰⁰ To what extent can we reasonably infer hostility from such actions? This appears far more than simply the exploitation of vulnerability or trust, although these are also implicit in the actions.
- 2.102 The Margaret Panting case (see 2.14) may be a good example of hostile domestic elder abuse, particularly in view of the cruelty and degree of harm perpetrated against her in such a short period of time (five weeks).

¹⁹⁸ Cited in Wydall, S. Clarke, A, Williams J. and Zerk, R. (2018) Domestic Abuse and Elder Abuse in Wales: A Tale of Two Initiatives, *British Journal of Social Work*, 48, 4, 962–981

¹⁹⁹ Cited in Wydall, S. Clarke, A, Williams J. and Zerk, R. (2018) Domestic Abuse and Elder Abuse in Wales: A Tale of Two Initiatives, *British Journal of Social Work*, 48, 4, 962–981

²⁰⁰ Age UK (2020) *No Age Limit: the blind spot of older victims and survivors in the Domestic Abuse Bill*, London: Age UK

Sexual violence

What do we know?

- 2.103 As with so many aspects of crimes against older people, there has been limited research into the extent and complexities of sexual violence. An American study in 1991 of 28 cases of suspected elder sexual abuse found victims to be female, in their 70's, suffering a major impediment to self-care, who had been sexually abused by a known person whom the victim was dependent upon for care. All the perpetrators were men.²⁰¹ That paper catalysed Malcolm Holt, a Northumberland social worker, to investigate. In two years he found 120 cases of serious sexual abuse around the UK; 85 per cent of victims were over 75. 90 per cent of those cases involved individuals completely dependent on their abusers for care.
- 2.104 There are however questions as to the extent to which elder sexual abuse is being addressed within the criminal justice system, with Action on Elder Abuse having reported on the difference in one year (2016) between sexual crimes reported through adult safeguarding, and consequent prosecution rates. They noted a disparity between 5.3% of sexual abuse cases referred to adult safeguarding and 1.9% of sexual offences prosecuted. While there may be a number of valid reasons why sexual offences are not prosecuted, this was a significant difference.²⁰²
- 2.105 Some studies in 2006 highlighted higher rates of sexual violence against older people by strangers and acquaintances than had previously been estimated.²⁰³ This was reinforced by the recent HMICRFS report, which noted that '*Research has shown that sexual offences against people aged 60 and over may have unique features. For example, there is a slightly higher number of incidents of stranger rape in this age group in comparison to the overall position.*'²⁰⁴ However, all statistics on elder sexual abuse are believed to be serious underestimates of this type of abuse in women who are vulnerable, frail and dependent on care as a result of a physical or cognitive disability (Roberto & Teaster, 2005).²⁰⁵
- 2.106 The location of the assault is an important dimension in understanding this type of crime. Burgess (2006) noted that 43% of victims lived alone at home and 38% lived in nursing homes. (Both domestic and nursing home vulnerability to sexual assault for the older adult population is documented in the literature cf. Burgess, Hanrahan & Baker, 2005; Teaster et al., 2000). In both settings, the victim required some level of assistance with physical or mental functioning.²⁰⁶ This implies some level of deliberate targeting by perpetrators, as described in paragraph 2.8 above.

²⁰¹ Ramsey-Klawnsnik, H. (1991) Elder Sexual Abuse: Preliminary Findings, *Journal of Elder Abuse and Neglect*, 3, 3, 73-90

²⁰² Action on Elder Abuse (2017) *Elder abuse is a crime, now let's make it one*, London: Action on Elder Abuse

²⁰³ Cited in Bows, H. and Westmarland, N. (2017) 'Rape of older people in the United Kingdom: challenging the 'real rape' stereotype.', *British Journal of Criminology*, 57, 1, 1-17

²⁰⁴ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

²⁰⁵ Cited in Burgess, A.W. (2006) *Elder victims of sexual abuse and their offenders*, Washington: Office of Justice

²⁰⁶ Burgess, A. (2006) *Elder victims of sexual abuse and their offenders*, Washington: Office of Justice

2.107 The relationship between the victim and the offender can also provide an insight into the circumstances of these crimes. Burgess (2006) reported research that suggested:

- In 74 cases (26.1%) the suspect was not known to the victim. e.g., the stranger category.
- In 66 cases (23.2%) the offender had a familial relationship with the victim, e.g., the incestuous category.
- In 44 cases (15.5%) the offender was a marital or common-law partner.
- In 31 cases (10.9%), the offender was an unrelated care provider.
- In 17 cases (6%) both the offender and victim were residents in a nursing home and
- in 21 cases (7.4%) the offender was known but had no familial or care providing relationship.²⁰⁷

2.108 Additionally, the impact on older women can be significantly different, particularly the severity of the violence used. A participant in research by Bows described the experience of an older woman raped by a younger acquaintance who broke both her hips during the rape. *'One thing [which is] alarming about perpetrators who target older women is that the rapes are quite ritualistic and violent and sinister.'*²⁰⁸

2.109 This research also noted that emotional effects described by practitioners were similar to those observed in younger survivors, including posttraumatic stress disorder (PTSD), depression, anxiety, sleep disturbance, and stress (Ullman, 2010). All practitioners felt these symptoms were amplified for older people arguing that, because of their age, they had fewer opportunities to draw on, or develop, supportive networks, for example, through employment or social relationships.²⁰⁹

2.110 In evaluating differences between cases that were addressed through criminal justice as opposed to adult protection (in America) it was noted that:

- Older offenders (age range 40-89) comprised the Adult Protection (AP) group while younger offenders comprised the Criminal Justice (CJ) group.
- The 30 to 39 age group for offenders was a majority offender age for CJ victims (53.7% of the offenders).
- Over half of the offenders were under 30, targeted and committed the rape in the victim's home, seriously injured their victim, and were convicted of sex crimes against two or more victims²¹⁰

Fifty-three (68.8%) of these men victimized only older women while 24 (31.2%) had victimized elders and younger aged women. There were 25 (32.5%) of the men who were incarcerated for one elder victim while 52 (67.5%) had assaulted two or more

²⁰⁷ Burgess, A. (2006) *Elder victims of sexual abuse and their offenders*, Washington: Office of Justice

²⁰⁸ Bows, H. (2017) Practitioner views on the impacts, challenges and barriers in supporting older survivors of sexual violence, *Violence Against Women*, 24,9,1070-1090

²⁰⁹ Bows, H. (2017) Practitioner views on the impacts, challenges and barriers in supporting older survivors of sexual violence, *Violence Against Women*, 24,9,1070-1090

²¹⁰ Burgess, A. (2006) *Elder victims of sexual abuse and their offenders*, Washington: Office of Justice

older victims.²¹¹ This confirms some significant element of deliberately targeting of older women, indicating that age is a facet in these crimes.

Perpetrator motivations

- 2.111 As has been discussed earlier, older people are subject to a wide variety of stereotypes associated with helplessness, diminishing power and competence. One suggestion is that many assailants seek out vulnerable people who they can easily overpower and manipulate. Although older people are not necessarily more vulnerable, these misconceptions can make older people a target for such violence.²¹² Consequently dependence, real or perceived, has an influence on this situation, particularly as older women are more likely to live alone (if they are not living in institutional care) due to a longer life expectancy and higher risk of widowhood. (A majority of widowers re-marry while widows tend not to do so).
- 2.112 Additionally, vulnerability is related to physical size and strength and older women are perceived to be less capable than younger women to flee or resist a physical attack. Plus, as people age, there are changes in skeletal, neuromuscular, and other systemic changes that can restrict mobility and thus reduce the ability to fight back. Older women are less likely than younger counterparts to have close interaction with a younger male or partner and more likely to be perceived by motivated offenders as suitable targets (Safarik, 2006).²¹³
- 2.113 However, if we can accept the argument (and we should) that the law is not capturing behaviour directed at disabled people where there is a belief (whether true or not) that the victim's disability makes them an easier target – for example for sexual exploitation - it should not be incompatible that a similar argument is valid in relation to age and older people. Consequently, old age vulnerability needs to be perceived in that context.
- 2.114 Finally, Stevenson & Jeary (2005) noted a recurring theme in the offenders in their study who reported an inability to perform sexually in age-appropriate relationships that applied across the age-range of offenders. This sexual dysfunction included an inability to sustain an erection or to ejaculate during consensual sex, and such feelings of sexual inadequacy led the men to seek out victims who would be potentially be least able to resist, to mock, or to report on their sexual performance.²¹⁴ The issue for rapists of elders may be polymorphous sexuality where the person is not only aroused by non-social objects but also age-inappropriate persons.²¹⁵

²¹¹ Burgess, A. (2006) *Elder victims of sexual abuse and their offenders*, Washington: Office of Justice

²¹² National Coalition Against Sexual Assault (1993)

²¹³ Cited in Burgess, A. (2006) *Elder victims of sexual abuse and their offenders*, Washington: Office of Justice

²¹⁴ Cited in Jeary, K. (2005) Sexual abuse and sexual offending against elderly people: focus on perpetrators and victims, *Journal of Forensic Psychiatry and Psychology*, 16, 2, 328-343

²¹⁵ Burgess, A. (2006) *Elder victims of sexual abuse and their offenders*, Washington: Office of Justice

- 2.115 The obvious challenge is to understand the extent to which older women are targeted for sexual violence because of either gender solely, or because of age solely, or because of both. Certainly, there are elements of power and control in targeting on the basis of both gender and of age. As indicated in 2.94 above, *'age combines with other identities resulting in a 'double jeopardy' whereby members of already marginalised groups are further stigmatised as they age.'*²¹⁶
- 2.116 As was argued in 2.97, while it would be reasonable to conclude that a proportion of these crimes are specifically targeted because of the gender of the victim, it is equally reasonable to conclude that a proportion are also about the age and potentially also the disability of the victim i.e. multiple and intersecting disadvantages. Whichever may be the dominant characteristic that the perpetrator focuses on may likely depend upon the circumstances of the individual crime. It is not possible to dismiss the element of age, not only because of the inherent ageism that influences societal views and perpetrator actions, but also because the older age of the victim is inevitably an intrinsic part of who they are and how they are physically perceived. This may have particular salience in relation to perpetrator choice/targeting of victims (as older women – both age and gender relevant).

Barriers to criminal action

- 2.117 There are a number of factors that are unique to the sexual abuse of older women that need to be additionally considered, as these often inhibit the recognition of the crime, and the appropriate responses:
- a) Ageist attitudes resist the concept of sexual activity involving older people, perhaps particularly older women. Perpetrators are routinely pathologized and seen as particularly sick or depraved to attack someone who is older (and therefore not sexually attractive) and 'frail' or 'vulnerable' because of their age.
 - b) physical manifestations or post trauma response to sexual abuse are ascribed to normal frailties and maladies of old age or are difficult to diagnose because of medical problems common to ageing (Gray & Acierno, 2002).²¹⁷
 - c) time delays in evidence collection. In many cases of elder sexual abuse, there is a long time lapse between the assault and disclosure of the assault, and the collection of forensic evidence may not occur in a timely way or even be possible.
 - d) Clinical and investigative experts report that intentional injury and bruising can mimic changes of aging and make the assessment and prosecutions of elder sexual abuse more complicated.²¹⁸

²¹⁶ Centre for Ageing Better (2020) *Dodderly but dear? Examining age related stereotypes*, London: Centre for Ageing Better

²¹⁷ Burgess, A. (2006) *Elder victims of sexual abuse and their offenders*, Washington: Office of Justice

²¹⁸ Burgess, A. (2006) *Elder victims of sexual abuse and their offenders*, Washington: Office of Justice

2.118 Examples of elder sexual crimes are contained in Appendix B.

BME and LGBT+ communities

2.119 The Law Commission consultation, in considering hate crime from the perspective of older people, did not consider different aspects of ageing e.g. the unique position of older minorities. Within those groups of older people there can be multiple forms of disadvantage, where age, gender, race and sexual orientation can all combine and intersect to create distinctive experiences of hate crime.

2.120 This multiple disadvantage can increase isolation and exclusion, making people easier targets for prejudice or hostility. For example: '*a black disabled person may feel excluded in their ethnic community because they are disabled and amongst their disabled peers because they are black.*'²¹⁹ LGTB+ people are five times less likely to access generic older people's services because of a fear of rejection, discrimination, their needs and circumstances not being understood, or that they will have to go back 'in the closet' in order to do so.²²⁰

2.121 As with so many aspects of crimes against older people, there is limited research within the UK that provides any substantial information in this regard, although there have been some studies within the US that indicate differences in terms of the types and impacts of crime, and how older communities address and cope with them.

2.122 Perceptions and experiences of ageing processes, and specific issues such as widowhood, differ significantly in different cultural contexts, and existing qualitative and quantitative data do not include these diverse factors or account for their relationship with violence against older women in minority communities.²²¹

2.123 Within BME communities, older women and older disabled people are as likely or more likely to experience prejudice because of their age than because of their gender or disability, whilst those from Asian and Afro-Caribbean backgrounds reported that race or ethnicity was the most common basis of prejudice faced. But they were also more likely than white respondents to report experience of prejudice on the grounds of their age. (Age Concern 2004)²²²

2.124 These differences are in part due to do with experiences of minority ethnic groups themselves, their particular cultural beliefs and preferred family structures. However, they are also related to wider social processes and practices, including

²¹⁹ Age reference group for Equality and Human Rights (2005) *Age and multiple discrimination and older people*, London: Age Concern

²²⁰ Age reference group for Equality and Human Rights (2005) *Age and multiple discrimination and older people*, London: Age Concern

²²¹ Meyer, S.R., Lasater, M.E and García-Moreno, C. (2020) Violence against older women: A systematic review of qualitative literature. *PLoS ONE* 15(9): e0239560.

²²² Age reference group for Equality and Human Rights (2005) *Age and multiple discrimination and older people*, London: Age Concern

racism, the marginalisation of minority groups and the limited way in which service providers have managed to respond to diversity.²²³

- 2.125 This situation can be compounded by prejudices held by older people themselves, and also within LBTG+ and BME communities, which in itself can give rise to hate speech and actions. For example, older lesbians and gay men may face rejection by both communities from which they might justifiably expect some support – including their heterosexual peers for being homosexual. According to a MORI poll on prejudice against minority groups undertaken in 2001, those aged 65 and over constituted the age group most likely to be prejudiced against lesbians and gay men [31%] - and by younger lesbians, gay men and bisexuals for being old queens/dykes and all the other pejorative terms. (One infamous and much quoted comment from a young gay HIV-positive man was that at least he didn't now have to face growing old as a gay man.)²²⁴
- 2.126 The migrants who moved to the UK in the post war era were mainly young adults; the current age profile of each minority group is therefore greatly influenced by their period of migration. While the proportion of those aged 65 and over is lower among all minority groups than amongst the white population, the percentage of black Caribbean elders, probably the earliest generation of post war migrants, has trebled since 1991, and the percentage of the Indian population which is older has doubled. Within these percentages, women make up over 50% of Chinese, Indian and black Caribbean people over 65 but only 34% of Bangladeshi people over 65.²²⁵
- 2.127 One study in Scotland suggested a higher incidence of abuse of older BME people than was estimated in the 2007 Prevalence Study, with likely significant under-reporting and hidden mistreatment found in BME experiences.²²⁶ Limited research undertaken in the US examined racial differences in (a) the prevalence of financial exploitation and psychological abuse since turning 60 in the past 6 months and (b) the experience—perpetrator, frequency, and degree of upset—of psychological abuse in the past 6 months. The study found that prevalence rates were significantly higher for African Americans than for non-African Americans for financial exploitation since turning 60 (23.0% vs. 8.4%) and in the past 6 months (12.9% vs. 2.4%) and for psychological abuse since turning 60 (24.4% vs. 13.2%) and in the past 6 months (16.1% vs. 7.2%).²²⁷ A further review of relevant research, undertaken from

²²³ Bowes A, Avan G, and Macintosh S. (2008) *They put up with it, what else can they do? Mistreatment of Black and Minority Ethnic older People and the service response*, University of Stirling: Department of Applied Social Sciences

²²⁴ Age reference group for Equality and Human Rights (2005) *Age and multiple discrimination and older people*, London: Age Concern

²²⁵ Age reference group for Equality and Human Rights (2005) *Age and multiple discrimination and older people*, London: Age Concern

²²⁶ Bowes A, Avan G, and Macintosh S. (2008) *They put up with it, what else can they do? Mistreatment of Black and Minority Ethnic older People and the service response*, University of Stirling: Department of Applied Social Science

²²⁷ Beach, S.R., Schulz, R., Castle, N. G., and Rosen, J. (2010) Financial Exploitation and Psychological Mistreatment Among Older Adults: Differences Between African Americans and Non-African Americans in a Population-Based Survey, *The Gerontologist*, 50, 6, December 2010, 744-757 (Available from: <https://doi.org/10.1093/geront/gnq053>)

the UK reported that about 9% of its (South Asian) participants experienced abuse in family settings, the frequently reported issues were psychological, financial and physical abuses, and neglect.²²⁸

- 2.128 In a survey of 416 LGBT+ people, aged 60 or over, 65% of respondents reported experiencing victimization due to sexual orientation (e.g. verbal abuse, threat of violence, physical assault, sexual assault, threat of orientation disclosure, discrimination) and 29% had been physically attacked. Men were physically attacked nearly three times more often than women. Those who had been physically attacked reported poorer current mental health. Many in the study were still closeted from others.²²⁹
- 2.129 Many transgender older adults have experienced mistreatment in long term care facilities. Examples include physical abuse, denial of personal care services, psychological abuse, being involuntarily “outed”, and being prevented from dressing according to their gender identity. Others are refused admission into long-term care facilities. The fear of discrimination and its reality generally result in underutilization of services.²³⁰
- 2.130 In terms of how older BME people respond to these crimes, the Scotland study found a very widespread view that, whilst abuse occurred and people knew about it and talked about it, if they experienced it directly, their most likely response would be to do nothing. This was partly due to their embeddedness in family relationships, their dependency on their current living arrangements, the potential shame of disclosure and a real lack of alternatives.²³¹ This is reflected in the Adult Safeguarding statistics for England, where only 3.1% of referrals related to Asian or Asian British people, and only 2.9% related to Black African, Caribbean or Black British people. (No data is reported on LGTB+ communities).²³²
- 2.131 This reluctance however is also true with regard to LBTG+ victims. Commonly reported consequences included social isolation due to discrimination, internalization of stigma, intersection of discrimination from multiple minority identities, and an abuser's desire for power and control. Participants were somewhat

²²⁸ Talpur, A., Ryan, T., Ali, P. and Hinchliffe, S. (2018) Elder mistreatment in South Asian communities: a review of the literature, , *Journal of Adult Protection*, 20, (5/6), 193-206

²²⁹ D’Augelli, A, & Grossman, A. (2001). Disclosure of sexual orientation, victimization, and mental health among lesbian, gay, and bisexual older adults. *Journal of Interpersonal Violence*, 16, 10, 1008-1027

²³⁰ National Academy on an Aging Society (GSA), & SAGE (2011). Integrating lesbian, gay, bisexual, and transgender older adults into aging policy and practice. *Public Policy & Aging Report*, 21(3), 1-36. Can be accessed from: <https://www.diverseelders.org/resource/integrating-lesbian-gay-bisexual-and-transgender-older-adults-into-agingpolicy-and-practice-june-2011>

²³¹ Bowes, A., Avan, G. and Macintosh, S. (2008) *They put up with it, what else can they do? Mistreatment of Black and Minority Ethnic older People and the service response*, University of Stirling: Department of Applied Social Science

²³² NHS Digital (2019) Safeguarding Adults England, 2018-19 data tables. <https://digital.nhs.uk/data-and-information/publications/statistical/safeguarding-adults/annual-report-2018-19-england#resources>

hesitant to report to police; however, most felt strongly that they would not report abuse to their medical provider.²³³

- 2.132 As with the wider older community, the reasons why people are targeted for hate crime is complex and multi-faceted, and age cannot be ignored. It has an impact on how victims see themselves, the historical circumstances in which they grew old within the UK and how that has influenced their choices, and the current circumstances in which they find themselves. But it also has an impact on what options they have in terms of managing and responding to hate crime. The motivation of the perpetrator can be as complex as in other scenarios involving a mix of age, gender, race and sexuality.

EXAMPLE: Property developer Craig Pesch, 34, left Ratid Shilaka, 71, drinking liquidised food through a straw after launching a vicious attack on him following a night out. Pesch had spent the night drinking £14,000 of vintage champagne at exclusive private members club Maddox in Mayfair, London, when he ordered a cab home. When Mr Shilaka arrived, driving the cab, he struggled to find Pesch's address on his SatNav because it was a new development. Pesch flew into a rage, got out and opened the driver's door before throwing a volley of punches in the victim's face. He then fled the scene while Mr Shilaka was rushed to hospital for emergency surgery. His jaw was left so badly broken it had to be rewired, several teeth were displaced, and he was unable to work again.

Pesch admitted causing grievous bodily harm but magistrates decided the offence was so serious he should be sentenced by a Crown Court. Prosecutor Edward Aydin had likened the attack to Robert De Niro's portrayal of ultra violent boxing middleweight Jake La Motta. "Mr Shilaka was a punching bag for a Raging Bull," said Mr Aydin. Mr Pesch mercilessly punched the victim in a sustained attack with immense force. He was strapped into his seatbelt at the time and Mr Pesch was knocking him around like a rag doll." Despite the seriousness of the offence, Judge Hofmeyr handed Pesch just a 12-month prison sentence suspended for two years. Pesch was also ordered to carry out 250 hours of unpaid work and to pay Mr Shilaka £1,000 in medical compensation.

Fraud and related crime:

- 2.133 The Law Commission consultation report considered the issue of fraud, but formed no conclusion about whether it should be included within the specified aggravated offences. Their analysis was developed on the basis of representation by disability groups that individuals were targeted for theft and exploitation on the basis of their disability, and that this should be recognised and punished as a form of hate

²³³ Bloemen, E.A. et al (2019) Lesbian, Gay, Bisexual, and Transgender Older Adults' Experiences With Elder Abuse and Neglect, *Journal of the American Geriatrics Society*, 67, (11): 2338-2345

crime²³⁴. This is in contrast with arguments made in relation to older people, where the suggestion is that *'fraud and scamming may disproportionately affect older people not because of their age, but the circumstances they find themselves in later life.'*²³⁵

Prevalence:

- 2.134 While official statistics have generally found older people to be at lower risk of experiencing fraud or financial scams (ONS, 2018), it is widely believed that these figures may reflect a lack of awareness of the nature and extent of fraud in older age groups.²³⁶ A recent report by Europol concluded that criminals have always seen older people as easy targets, but the growing number of potential victims, low risk of being caught and lenient sentences were likely to encourage increased targeting of older people.²³⁷ They point out that *'elderly people have long been the targets of criminal activity and this is set to increase with a growing population of people aged 60 and above. Fraud against the elderly perpetrated by Organised Crime Groups currently affect most EU Member States and is likely to spread more widely with a growing elderly population.'*²³⁸
- 2.135 The HMICRFS noted that certain types of crimes affecting older people – such as fraud – are increasing and the population is getting older, so it is possible that there is an increasing number of older victims. *'We recognise that there is a wider trend of a reduction in referrals to the CPS by the police. However, more work needs to take place to understand why, given the above factors, referrals of crimes against older people are in decline.'*²³⁹
- 2.136 People of all ages, education and wealth are victims of fraud. However, older people are over-represented as victims of particular types of fraud, including pension and investment fraud, postal scams, doorstep scams and telephone scams. For example, the average age of victims of mass marketing postal fraud is 75 years. This includes lottery and prize scams, and clairvoyant scams. Often, victims are at home alone all day, craving any opportunity for contact or interaction with the outside world.²⁴⁰ They can also be viewed as an easy target by fraudsters, or they may have placed their financial affairs in the care of others because of mental ill health.²⁴¹

²³⁴ Dimensions UK (2019) “#I’m with Sam: people with learning disability and autism’s perceptions of crime and abuse” *Dimensions* (2019) p 8.

²³⁵ Bows, H. (2020) *Is more law the answer? Discussion Document* Durham: University of Durham Law School

²³⁶ Bows, H. and Penhale, B. (2018) Elder Abuse and Social Work: Research, Theory and Practice, *The British Journal of Social Work*, 48, (4), 873–886,

²³⁷ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

²³⁸ EUROPOL: (2015) *Exploring tomorrow’s Organised Crime*, The Hague, NL: Europol

²³⁹ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

²⁴⁰ Age UK (2018) *Applying the Brakes, Slowing and stopping fraud against older people*, London: Age UK

²⁴¹ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

2.137 Befriending older people for the purposes of fraud is old age 'mate crime', whereby a relationship is established and exploited for financial or other gain. For example, Selina Clarke was a registered nurse who befriended an old man, (who was blind and in the early stages of Alzheimer's disease), calling him 'dad' and continuing to visit him after his discharge from hospital, against the wishes of his family. She defrauded an estimated £250,000 from him over seven years. She was struck from the nursing register of the Nursing and Midwifery Council. The police considered the case at some length but chose not to prosecute on the grounds of apparent "consent" by the older man (failing to recognise the coercive nature of the relationship). The son exercised a CPS "right to review" option demanding a prosecution but was again unsuccessful.²⁴²

2.138 The charity Think Jessica note that, in relation to scams:²⁴³

- 53% of older people aged 65 plus been targeted by a scammers
- The average age of a scam victim is 75, showing that criminals tend to prey on older and often more vulnerable members of society
- Victims are often lonely and the criminal is the only 'friend' they have
- Scammers intimidate and bully their victims into parting with their life savings
- Only 5% of scam victims make a report
- Victims details are perpetually shared and sold to other criminals
- The stress and pain of victimization often results in depression, withdrawal and isolation from family and friends and the deterioration of physical and mental health
- People defrauded in their own homes are 2.5 times more likely to either die or go into residential care within a year
- In some cases victims have considered, attempted or committed suicide

2.139 The extent of fraud against older people is significant:

- Fraudsters target people aged 55+ with investment scams, as this is the stage in life when a person's wealth is usually at its peak. Such scams have grown since the 2015 pension freedoms, and victims lose a massive £32,000 on average.²⁴⁴
- Research conducted by Age UK found that more than half (53 percent) of people aged over 65 believed they had been targeted by fraudsters. More than two-fifths (43%) of older people – that's almost 5 million people aged 65+ believe they have been targeted by scammers. (You are 5 times more likely to be a victim of fraud than domestic burglary, and nearly a third (31%) of all crime is fraud related).²⁴⁵

²⁴² Nursing and Midwifery Council Fitness to Practice Substantive meeting, 24 June 2020, also further information from Ian Cranefield

²⁴³ <https://www.thinkjessica.com/shocking-facts/> (Data from the National Trading Standards Scams Team)

²⁴⁴ Age UK (2018) *Applying the Brakes, Slowing and stopping fraud against older people*, London: Age UK

²⁴⁵ Age UK (2018) *Applying the Brakes, Slowing and stopping fraud against older people*, London: Age UK

- Of those older people targeted by fraudsters, over a quarter (27%) of single people responded to the scam, compared to just under a tenth (9%) of their married counterparts.²⁴⁶
- Research by Citizens Advice suggests that while older people do experience online fraud, scams experienced by people aged 65+ are more likely to occur through phone calls and less likely to occur by email or online, compared to younger people.²⁴⁷
- Analysis of doorstep crime conducted by the national tasking group of National Trading Standards in 2014 found that 85 percent of victims were aged 65 and over. Similarly, a 2004 study suggested that 82 percent of victims of distraction burglary were over the age of 70 and were usually elderly, female and white.²⁴⁸

2.140 However, in their 2019 report, *Fraud: Time to Choose*, HMICRFS concluded that forces needed to do more to understand the nature of fraud in their area and work out how to respond.²⁴⁹

Victims and impact:

2.141 Some older people are especially at risk, either because fraudsters target them or because their circumstances make them vulnerable – they may be bereaved, lonely, isolated, living with dementia or other cognitive impairment or otherwise lacking support.²⁵⁰ In addition, recent evidence about age-associated financial vulnerability suggests that cognitive changes that occur through ageing can result in impaired decision-making, particularly in relation to finances and mean that people may well become more susceptible to fraud and scams when older²⁵¹

2.142 Cohen (2006) states that consumer fraud can leave older victims feeling embarrassed and in denial. The experience of the NFIB's Operation Archway, into share purchase fraud, and information provided on mail-scam victims by Think Jessica and SOCA, demonstrates that victims are often in denial and may refuse to believe that they are victims, despite the attempts of others to convince them otherwise.²⁵²

2.143 Think Jessica identifies that declining mental health of chronic victims is often worsened by the scam mail they receive. This is supported by the mental health charity, Mind, who suggest that financial abuse can cause further mental distress for the victim, exacerbating existing symptoms or causing new ones. It can also lead to

²⁴⁶ Age UK (2018) *Applying the Brakes, Slowing and stopping fraud against older people*, London: Age UK

²⁴⁷ Age UK (2018) *Applying the Brakes, Slowing and stopping fraud against older people*, London: Age UK

²⁴⁸ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

²⁴⁹ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

²⁵⁰ Age UK (2018) *Applying the Brakes, Slowing and stopping fraud against older people*, London: Age UK

²⁵¹ Lachs, M. and Han, S. (2015) Age-Associated financial vulnerability: an Emerging Public Health Issue, *Annals of Internal Medicine*, 163, 11, 877-878

²⁵² SCIE (2011) *Assessment: financial crime against vulnerable adults*, SCIE report 49, London: SCIE

greater isolation and social exclusion, particularly where loss of money or property make it more difficult for the person to live a full and active life.²⁵³

Options:

- 2.144 In view of the above, a discriminatory selection hate crime model would better address this type of fraudulent activity, where older people are deliberately targeted by the offender on the basis that they are considered an “easier target” or more likely to have cash or valuable items, rather than because of any targeted dislike for them. Including such crimes within the specified aggravated offences would be welcome.
- 2.145 However, in the absence of a discriminatory selection model, a prejudice-based test would address these situations, where the age of the victim may have influenced the perpetrator’s assessment that the victim was more potentially exploitable, or less likely to resist.

Statistics:

Elder Abuse

- 2.146 As indicated in paragraph 1.90 onward, the prevalence figure used by the Law Commission to consider absolute prevalence of elder abuse was not wholly based on the WHO definition²⁵⁴. It only considered abuse within the narrow confine of family, friends and care workers (those in a position of trust), and the initial analysis excluded acts committed by neighbours or acquaintances. It also excluded anyone with cognitive impairment, and it under-counted neglect and psychological abuse (by a factor of 10). Consequently, the 2.6% (227,000 people) was a limited estimate which did not reflect the range of potential crimes identified within the study.²⁵⁵
- 2.147 The Secondary analysis of the 2017 UK Prevalence Study gives a mid-range estimate of 8.6% of people aged 65+ experiencing abuse in a given year²⁵⁶. Action on Elder Abuse has estimated that this translates to 998,500 people. While this tallies closely with polling undertaken by them (AEA) in February 2017, in which 9.3% of older people reported experienced some form of abuse, (equivalent to 1,080,000 people),²⁵⁷ subsequent polling by AEA suggested a much higher percentage (22%) experienced abuse (estimated at 2.7 million people).

²⁵³ SCIE (2011) *Assessment: financial crime against vulnerable adults*, SCIE report 49, London: SCIE

²⁵⁴ Biggs, S., Erens, B., Doyle M. et al. (2009) *Abuse and neglect of older people: secondary analysis of UK prevalence study*, London: Kings College London, National Centre for Social Research

²⁵⁵ O’Keeffe, M., Hills, A., Doyle, M., McCreadie, C. et al (2007) *UK Study of Abuse and Neglect of Older People Prevalence Survey Report*, London: National Centre for Social Research, King’s College London.

²⁵⁶ Biggs, S., Erens, B., Doyle, M. et al. (2009) *Abuse and Neglect of Older People: Secondary Analysis of UK Prevalence study*, London: National Centre for Social Research, King’s College London.

²⁵⁷ Action on Elder Abuse (2017) *A patchwork of Practice*, London: Action on Elder Abuse

2.148 The AEA poll in 2017 involved 3,183 people across the UK to assess attitudes to making elder abuse a hate crime. More than 1 in 10 of those over 65's who took part in the survey had experienced abuse themselves or knew someone who had.²⁵⁸

(The extrapolations below were based on the population data for older people at that time. Transposing the 5% figure of those who indicated psychological abuse onto the data at population level suggests its equivalent in population numbers).

Q5. Have you, a relative of yours or someone you know (excluding relatives), ever experienced any of the following types of elder abuse?		
Psychological (e.g. sustained verbal threats, mockery or intimidation)	5.00%	580,558
Physical (e.g. being pushed, hit, or beaten)	2.80%	325,113
Sexual (e.g. inappropriate or unwanted sexual comments or acts, sexual assault, rape)	1.70%	197,390
Financial (e.g. theft of money, doorstep scamming or abuse of power of attorney for financial gain)	1.40%	162,556
Other	1.10%	127,723
Neglect (e.g. not attending to an older person's needs in a timely way in a care or private setting)	0.50%	58,056
All abuse & neglect		1,451,396

Relative –all respondents	
Neglect (e.g. not attending to an older person's needs in a timely way in a care or private setting)	3.60%
Psychological (e.g. sustained verbal threats, mockery or intimidation)	3.00%
Financial (e.g. theft of money, doorstep scamming or abuse of power of attorney for financial gain)	2.80%

²⁵⁸ Action on Elder abuse (2017) *Elder Abuse is a crime, let's make it one*, London: Action on Elder Abuse

Physical (e.g. being pushed, hit, or beaten)	2.70%
Other	1.10%
Sexual (e.g. inappropriate or unwanted sexual comments or acts, sexual assault, rape)	0.60%

Someone I know (excl relatives)	
Psychological (e.g. sustained verbal threats, mockery or intimidation)	4.00%
Financial (e.g. theft of money, doorstep scamming or abuse of power of attorney for financial gain)	3.90%
Neglect (e.g. not attending to an older person's needs in a timely way in a care or private setting)	3.50%
Physical (e.g. being pushed, hit, or beaten)	3.40%
Other	1.50%
Sexual (e.g. inappropriate or unwanted sexual comments or acts, sexual assault, rape)	1.20%

2.149 The more recent poll²⁵⁹ in December 2020, conducted by Action on Elder Abuse (now called Hourglass), of over 2500 adults indicated:

- a) 1 in 5 (22 percent) of people either had personal experience of abuse as an older person (aged 65+) or knew an older person who had been abused (estimated by the charity as affecting at least 2.7 million people)
- b) 53% of people in the UK felt that the abuse and neglect of older people had increased as a result of the pandemic lockdown
- c) 1 in 3 (35 percent) do not consider 'inappropriate sexual acts directed at older people' as abuse (or a crime)
- d) nearly a third (30 percent) do not consider 'pushing, hitting, or beating an older person' as abuse (or a crime)
- e) nearly a third (32 percent) do not consider 'taking precious items from an older relative's home without asking' as abuse (or a crime).

2.150 An analysis of the European Social Survey, which sought the views of 55,000 people across 28 European countries, indicated that 29% of older people had been insulted, abused or denied services on the grounds of age.²⁶⁰

²⁵⁹ Checked on Action in Elder Abuse website on 4 December 2020- poll results published on website

²⁶⁰ Age UK (2011) *Ageism in Europe, findings from the European Social Study*, London: Age UK

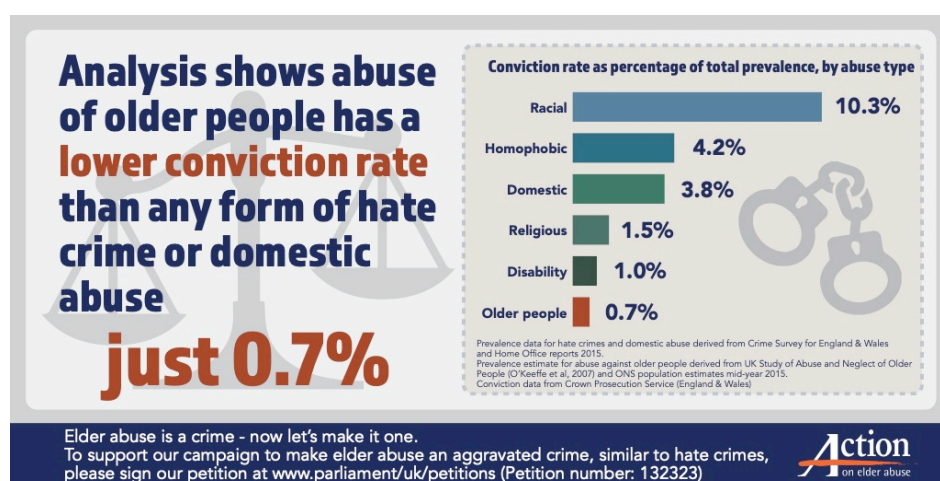
2.151 A review of elder abuse prevalence in community settings in 2017 found the global prevalence of elder abuse in community settings of men and women was 15.7% in the past year, with psychological abuse and financial abuse the most prevalent forms of abuse reported.²⁶¹

2.152 Conclusion: In statistical terms UK data suggests the prevalence of elder abuse (and potentially crimes against older people) is likely to be between 8.6% (998,000 people) and 9.3% (1,080,000 people). However, recent WHO figures fairly solidly suggest around 1 in 6 older people have experienced abuse (17%)²⁶² and the latest AEA polling suggests 2.7 million people.

Criminal Justice

2.153 The number of crimes against older people that reach the attention of the police, and are subsequently prosecuted, are likely to represent only a small percentage of the reality facing older people (see below). As outlined earlier, many crimes are 'social worked' and are diverted down a non-criminal adult safeguarding route, and these include criminal actions in care homes and hospitals. It is therefore not equitable to use CPS data to establish actual or relative prevalence, and the figures should be considered in that context.

2.154 An analysis of crime figures by Action on Elder Abuse found that the number of successful criminal prosecutions in 2015/2016 (3,012) represented just 0.7% of total prevalence.²⁶³ This analysis was based on a narrow definition of elder abuse and did not include any wider potential crimes, suggesting an even lower overall prosecution rate when all crime scenarios are considered.



²⁶¹ Yon Y, Mikton CR, Gassoumis ZD, et al. (2017) Elder abuse prevalence in community settings: a systematic review and meta-analysis. *Lancet Glob Health* 2017;5:e147–56.

²⁶² World Health Organisation (2020) WHO factsheet on Elder Abuse (available from: <https://www.who.int/news-room/fact-sheets/detail/elder-abuse>)

²⁶³ Action on Elder Abuse (2017) *Elder Abuse is a Crime, let's make it one*, London: Action on Elder Abuse

- 2.155 While older people are significantly less likely to be the victims of a violent crime in comparison to other adult age groups, in relation to burglary, criminal damage and some forms of theft the risks of an older person being a victim of such a crime are similar to the adult population as a whole. It should also be noted that numbers of recorded violent crimes against the older population are increasing, according to PSNI statistics, at a time when recorded violent crimes against other age groups is falling or remains stable.²⁶⁴
- 2.156 Research also indicates a rise in doorstep crime and distraction burglary against older people²⁶⁵. and an analysis of domestic homicides found one in four involved a victim aged 60 or over, despite this cohort constituting only 18% of the population.²⁶⁶
- 2.157 Conclusion: While these statistics provide some evidence of the prevalence of crimes against older people they cannot be reliably used as an indication of overall prevalence.

Other Countries

- 2.158 It has been argued that sectors of society are only included in legislative protection measures when there is sufficient lobbying pressure to bring their needs to wider attention. In the US it has been pointed out that children, older people, and police were all status provisions proposed early in federal lawmaking but never adopted as core elements of federal hate crime law, in large part because none of these target groups had advocates lobbying Congress to include them in federal lawmaking on hate crime. *'The reason we did not include octogenarians who are assaulted is because there was no testimony that suggested that they ought to be, as awful as the crimes visited upon them are'*. A comparison along these lines reveals that the inclusion of status provisions in the law is, in the first instance, an outgrowth of social movement mobilization, the presence of interest groups, and the dynamics of lawmaking.²⁶⁷
- 2.159 Chakraborti notes this issue too: *'Whether because of greater resources, a more powerful voice, public support for their cause or a more established history of stigma and discrimination, campaigners working to support certain strands of hate crime victim will invariably be able to lobby policymakers harder than other potential claim makers. It is that capacity to 'shout louder' that can sometimes influence who*

²⁶⁴ Brown, K. and Gordon, F. (2019) *Improving Access to Justice For Older Victims of Crime: Older People as Victims of Crime and the Response of the Criminal Justice System in Northern Ireland*. Belfast: Commissioner for Older People for Northern Ireland.

²⁶⁵ Lonsdale *et al*, 2016; Sivarajasingam *et al*, (2016) Trends in Violence in England and Wales 2010-2014, *BMJ*,

²⁶⁶ Bows, H. (2018) Domestic Homicide of Older People (2010–15): A comparative analysis of intimate-partner homicide and parricide cases in the UK. *British Journal of Social Work* 49, (5), 1234-1253.

²⁶⁷ Grattet, R. and Jenness, V. (2001) Examining the boundaries of hate crime law: disabilities and the dilemma of difference, *Journal of Criminal Law and Criminology*, 91, (3), 653

*receives protection from hate crime laws and who does not, meaning that some victims of hate crime may not receive the recognition they expect or deserve.'*²⁶⁸

- 2.160 An obvious challenge in comparing legislation between countries is one of inconsistency in terms of definitions, the way in which law is structured, and whether crimes against older people are targeted as defined hate crimes or as elder abuse crimes. Both address crimes against older people, but one clearly focuses upon motivation much more than the other, although the evidence required to substantiate a hate crime varies significantly between jurisdictions. The Law Commission acknowledge this in their consultation report.
- 2.161 In terms of hate crime, the Scottish Academic Report noted that a number of other jurisdictions include age as a protected characteristic. These include New South Wales, Canada, New Zealand, District of Columbia, Florida, Iowa, Louisiana and Vermont in the US. Of these, only Florida specifically refers to 'advanced age'.²⁶⁹ Other reports include the US States of Minnesota, Nebraska, New York, Texas.²⁷⁰
- 2.162 Additionally, the Organisation for Security and Cooperation in Europe (OSCE) notes that, outside the 'core groups' of race, national origin, ethnicity and religion, there is a lack of consensus as to which characteristics are protected under hate crime law. Its analysis of hate crime provisions in the 57 member states of the OSCE identified gender, age, mental or physical disability and sexual orientation as characteristics that are quite frequently protected.²⁷¹
- 2.163 The Law Commission consultation report notes that, '*in Florida, a jurisdiction which specifically allows for a more serious penalty based on prejudice towards older age, the provisions are rarely used. However, we note that there are very few hate crimes reported in Florida*'. The reality is that there appear to be very few hate crimes reported overall in the United States, with the FBI hate crime statistics²⁷² suggesting that there were only 6,121 hate crime incidents involving 7,321 offenses reported to Federal Authorities in the whole of 2016 (only 77 disability hate crimes). Set against the England and Wales records, where the police recorded 94,121 hate crimes in 2017-18²⁷³ alone, this suggests there may be little advantage in drawing such comparisons.
- 2.164 However, the rate of prosecution can be influenced by a number of factors, including resources, processes, training of investigative and prosecution staff, and expertise. For example, in San Diego county - which has a population of about 3 million people of whom about 15% are over the age of 65 – a specialised elder abuse prosecution

²⁶⁸ Chakraborti N, (2015) 'Framing the Boundaries of Hate Crime', In Hall, N. et al.,(2015) (eds) *The Routledge International Handbook on Hate Crime*, Oxon: Routledge

²⁶⁹ Scottish Govt (2018) *Independent Review of Hate Crime Legislation in Scotland Final Report* Edinburgh: Scottish Govt.

²⁷⁰ Hull, H-G (2009) The Not-so-golden years: why hate crime legislation is failing a vulnerable ageing population, *Michigan State Law Review*, Vol 2009, (2), 384

²⁷¹ OSCE (2009) *Hate Crime Laws: A practical guide* London: OSCE

²⁷² <https://ucr.fbi.gov/hate-crime/2016/hate-crime>

²⁷³ Home Office, "*Hate Crime, England and Wales, 2018 to 2019: data tables*" (15 October 2019) London: TSO

unit was established in the District Attorney's office. When it started in 1996 there were zero cases even though there was a California Statute [PC 368] since the mid 1980s. By 2018 it was averaging approximately 425 cases a year, with about a 91% conviction rate.²⁷⁴

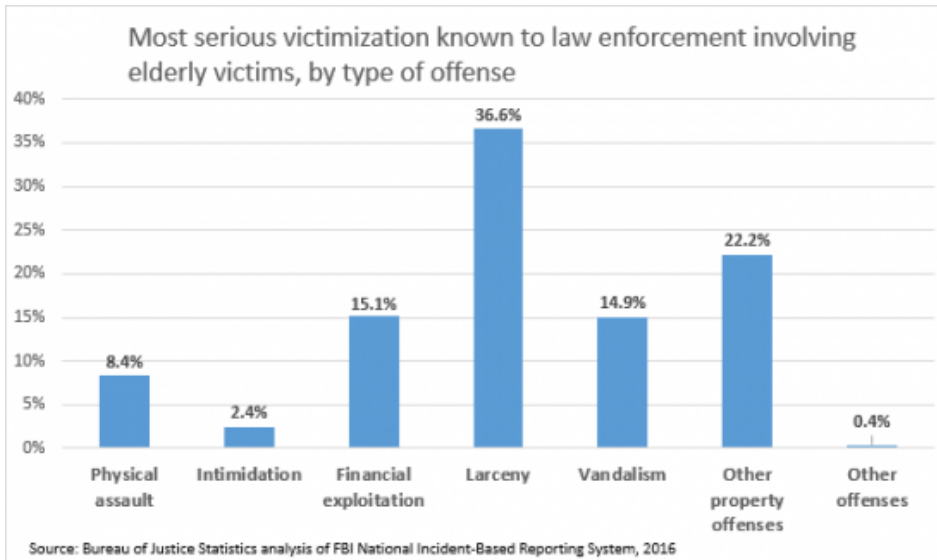
- 2.165 The IDAHO Crime Victimization survey in 2004 noted that, in the previous year, 6 out of every 1,000 older people reported actual hate crime victimization. About 50 of every 1,000 older people considered they were vulnerable to hate crime; but only 25 of every 1,000 older people had ever been victimized by hate crime at least once in their lifetime.

The reasons for feeling vulnerable included age (33%), race (20%), and religion (7%) among a combination of other factors. Comparatively, the elderly cohorts were more concerned with becoming targets of hate crime due to their age, race or religion, than for gender, sexual orientation or physical disabilities, even when 20 of the elder respondents indicated that they considered themselves disabled.²⁷⁵

- 2.166 In 2017, President Trump signed into law the Elder Abuse Prevention and Prosecution Act, identifying the need for improved data collection on elder abuse. Some reports involving elder abuse are made directly to law enforcement agencies, who submit their state level reports to NIBRS, a system maintained by the Federal Bureau of Investigations Uniform Crime Report program. NIBRS collects data about crime incidents known to state and local law enforcement. Some of these incidents may have involved hatred, hostility or prejudice, but the data does not allow such analysis.
- 2.167 In 2016 the NIBRS reported on the types of crimes being addressed by Law Enforcement Agencies under the category of elder abuse. These included vandalism, financial exploitation, intimidation, and physical assault. While the data does not record the motivation of the perpetrator, it is reasonable to conclude that at least some aspects of these crimes had hostile intent, and others were a consequence of prejudice-based selection.

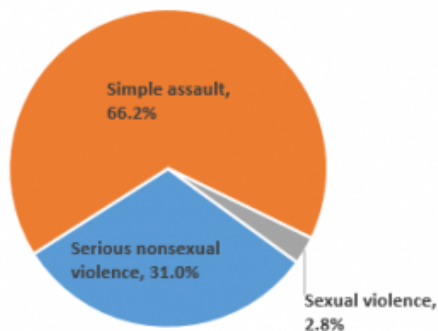
²⁷⁴ Greenwood, P. (2020) Information from P. Greenwood, former Deputy District Attorney, San Diego, (Personal Communication)

²⁷⁵ Elderly victims of crime, derived from the Idaho Crime Victimization survey, July 2004



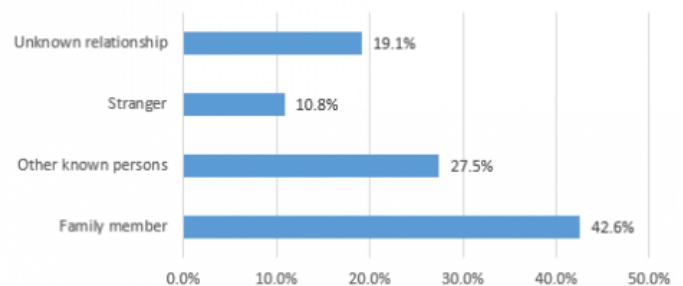
2.168 Over one third of assaults were considered to be serious, including sexual assaults, with 70% of the crimes being perpetrated by family members or those known to the victims.

Among senior victims of physical assault known to law enforcement, the type of assault experienced



Source: Bureau of Justice Statistics analysis of FBI National Incident-Based Reporting System, 2016

Relationship between elderly victim and alleged perpetrator, among violent crime known to law enforcement



Source: Bureau of Justice Statistics analysis of FBI National Incident-Based Reporting System, 2016

2.169 Additionally, the US Department of Justice produced a report in 2012²⁷⁶ on violent crimes against older people in Michigan during a four-year period (2005 to 2009). This detailed violent victimization of people aged 65 or older who were victims of murder, non-negligent manslaughter, forcible rape, violent sexual assault, robbery, aggravated assault, kidnapping, and simple assault.

2.170 Nearly 824,000 such violent victimizations came to the attention of law enforcement in Michigan from 2005 to 2009. Victimization of older people accounted for 1.6% (or 13,220). Older victims reported a higher percentage (58.5%) of nonfatal violent victimizations to law enforcement, compared to other age groups (47.2%). (Violent offenses that occurred in residential and nursing care homes could be reported to

²⁷⁶ US Dept. of Justice (2012) *Violent Crime against the Elderly reported by Law Enforcement in Michigan, 2005-2009*, Washington: US Dept of Justice

and investigated by adult protection units and consequently the NIBRS data is likely an undercount of the volume of such crimes known to authorities in general).

- 2.171 The rate of reported violent victimization in Michigan among the older population generally decreased with age; however, there were exceptions to this finding. The murder rate of persons aged 85 or older (3.3 per 100,000 persons age 85 or older) was 1.5 times higher than the rate for persons age 65 to 84 (1.9 per 100,000 persons age 65 to 84). The rate of forcible rape and sexual assault of persons age 85 or older (11.9 per 100,000 persons) was more than 3 times greater than the rate for persons aged 65 to 84 (3.6 per 100,000 persons). Finally, the robbery rates were relatively similar for victims age 70 or older.
- 2.172 Conclusion: While comparisons with other countries can provide an insight into the types of crimes being perpetrated against older people, and some indication of numbers who are reaching the attention of Law Enforcement, they are not very reliable in terms of understanding prevalence or likely prosecution rates. The IDAHO Crime Victimization survey (para 2.165 above) may provide some useful information, while the San Diego data indicates the advantage of specialised prosecution teams.

Adult Safeguarding

- 2.173 Adult Safeguarding services were established in law under the Care Act 2014 to respond to abusive situations involving adults. The majority of those situations that are referred (an average of 63%) relate to older people. Although the police are involved in local Adult Safeguarding Boards and procedures, the primary focus of the services are to stop or prevent abuse and protect the victim rather than to prosecute the perpetrator, although criminal justice action does sometimes happen.
- 2.174 Based on data from England and Wales, Action on Elder Abuse has estimated that less than 10% of older people who experience abuse or neglect are brought to the attention of adult protection services,²⁷⁷ despite the fact that older people as an age group are likely to be disproportionately represented in adult safeguarding arrangements.
- 2.175 There are concerns however that Adult Safeguarding may be reinforcing an attitude that abuse of older people does not constitute 'real crime' and can therefore be dealt with by the social care sector without criminal justice involvement.²⁷⁸ As few as 6% of older victims report abuse to the police. In 2013/14 there were 28,000 substantiated adult protection referrals regarding elder abuse and yet there were only 3,317 referrals by police to the CPS in England and Wales. In 2013/14 18,932 crimes against people aged 60+ were recorded in Wales and yet there were only 194 successful convictions.²⁷⁹

²⁷⁷ Estimate based on the UK Prevalence Study (2007) – already cited

²⁷⁸ Action on Elder Abuse (2017) *A Patchwork of Practice*, London: Action on Elder Abuse

²⁷⁹ Action on Elder Abuse (2016) *The need for a criminal offence of elder abuse*, London: Action on Elder Abuse

- 2.176 Even accepting the principle that not all crimes are prosecuted, that some victims may not want to proceed with criminal action, and that there may be circumstances when it is not in the public interest to proceed with criminal action, this disparity between crime and prosecution rates is stark.
- 2.177 A total of 364,605 concerns were raised about possible abuse with local authorities and 63% of the 109,145 enquiries begun in 2016/17 related to people aged 65 and over (a total of 69,265 individuals). The likelihood of someone being the subject of an adult safeguarding enquiry rises steeply with age; those aged 85+ are 20 times more likely to be the focus of an enquiry than someone aged 18-64.²⁸⁰
- 2.178 These figures represent 768 in every 100,000 people aged 75 to 84, and 2,384 in every 100,000 people aged 85+. Put another way, that's 1 in every 130 people aged 75 to 84 years, and 1 in every 42 people aged 85+. The types of abuse addressed are physical abuse at 24%, sexual abuse at 5%, Psychological at 14%, Financial at 16% and neglect at 35%, all of which have the potential to be criminal in nature.²⁸¹
- 2.179 Across England, 44% of enquiries related to abuse in the home, whether by paid staff or others, with 35% relating to care homes. Only 3% concerned acute hospitals, 1% community hospitals and a further 2% Mental Health hospitals.²⁸² The low level of reporting in relation to hospitals is most likely because of under-reporting and the use of Serious Incident protocols instead of Adult Safeguarding or criminal justice options.
- 2.180 Adult Safeguarding intervention resulted in only 26% of cases where the risk to the individual was entirely removed.²⁸³
- 2.181 Conclusion: Adult Safeguarding may be adversely influencing criminal justice figures by diverting criminal behaviour into social policy and welfare activity. At least 28,000 older people can be the subject of adult safeguarding in any one year, but this is likely to be an under-representation based on the 2017 UK Prevalence Study.

Care provision

- 2.182 In adult social care, 3% of care homes (512 homes, covering nursing and residential homes and accounting for just under 23,000 people) have never been rated better than 'requires improvement', and a further 8% (1,216) have had one good or outstanding rating but are currently rated as inadequate or requires improvement (accounting for just over 42,000 people).²⁸⁴ Taken together, that figure (65,000

²⁸⁰ Action on Elder Abuse (2017) *A Patchwork of Practice*, London: Action on Elder Abuse.

²⁸¹ Action on Elder Abuse (2017) *A Patchwork of Practice*, London: Action on Elder Abuse.

²⁸² Action on Elder Abuse (2017) *A Patchwork of Practice*, London: Action on Elder Abuse.

²⁸³ Action on Elder Abuse (2017) *A Patchwork of Practice*, London: Action on Elder Abuse.

²⁸⁴ Care Quality Commission (2020) *The state of Health Care and Adult Social Care in England 2019/2020*, London: Care Quality Commission.

people) represents approximately 16% of the number of older people in residential care.²⁸⁵

- 2.183 However, international data suggests the prevalence of abuse in institutional settings may be as high as 64.2%, according to data obtained from self-reports of perpetration by caregivers in institutions, with prevalence estimates highest for psychological abuse, and physical violence, neglect, financial abuse and sexual abuse less prevalent.²⁸⁶
- 2.184 For community social care services 3% (212, providing services to more than 9,000 people) have never been rated better than requires improvement, and a further 5% (393, providing services to more than 18,000 people) have had one good or outstanding rating, before falling back to inadequate or requires improvement by 31 March 2020.²⁸⁷
- 2.185 These assessments are based on the fundamental standards of safety and quality which all providers of regulated health and social care activities must meet. The standards set the benchmark below which care must not fall. One of the standards relates to safeguarding.
- 2.186 Of course not all failures of fundamental standards relate to abuse or neglect, but there have been regular examples reported in the media of actions and inactions within care provision that have been cruel, wilful and criminal. In some cases (see para 2.50 relating to Freda Jobson; para 2.19 relating to Alec Taylor), these have reached criminal intervention, but many fail to be considered for such action.
- 2.187 Conclusion: Some of the actions and inactions within care provision could reasonably be considered from a hate crime perspective. In 2019/20 at least 116,000 older people were receiving care that did not meet legal requirements. While it is not possible to ascertain the percentage of these that would involve criminal activity or meet the hate crime threshold, it is reasonable to conclude that a proportion of them would.

Hospital and Health

- 2.188 In the Adult Safeguarding report for 2017, only eight local authorities had referrals from acute hospitals of more than 10% (range 26% to 10%), six from mental health hospitals of more than 10% (range 34% to 11%), and one with 10% from community hospitals.²⁸⁸ As indicated previously, this is likely to be an under-representation of the situation in hospitals with a high likelihood that abusive/criminal actions either

²⁸⁵ Age UK note that 400,000 older people are in care homes in the UK, citing Laing Buisson, Care homes for older people – Market Report (2018), see Age UK (2019) *Later Life in the United Kingdom 2019* p 16 London: Age UK

²⁸⁶ Yon, Y., Ramiro-Gonzalez, M, Mikton, C.R, et al. (2019) The prevalence of elder abuse in institutional settings: a systematic review and metanalysis. *Eur J Public Health* 2019;29:58–67.

²⁸⁷ Care Quality Commission (2020) *The state of Health Care and Adult Social Care in England 2019/2020*, London: Care Quality Commission.

²⁸⁸ Action on Elder Abuse (2017) *A Patchwork of Practice*, London: Action on Elder Abuse.

do not get reported, or that the victims die without action being taken, or the situation is pursued through Serious Incident routes. Less commonly there are adult safeguarding investigations.

- 2.189 Safe Later Lives noted this situation in their Insights data, where *‘only 9% of older domestic abuse clients are referred through health routes, which is surprising when those aged 61+ are statistically more likely than younger victims to report poor physical health (11% compared with 3% of those under 61) and to have visited their GP in the past 12 months (53% compared to 46% of those under 61).’*²⁸⁹
- 2.190 EUROPOL have suggested that healthcare services aimed at providing care for the elderly represent a growth sector and Organised Crime Groups may be tempted to enter this lucrative business. Infiltration of the healthcare industry by organised crime entails the risk of sub-standard care provision to vulnerable members of society and also offers additional opportunities for criminal activities such as the proliferation of counterfeit medicines or various fraud offences against patient and insurance providers.²⁹⁰
- 2.191 Conclusion: The section on health (para 1.68 onward) details a range of abusive hospital scenarios, some of which could reasonably be considered to be based on hostility or prejudice toward older people. Consequently, when considering the prevalence of crimes against older people it is important to include situations that occur with hospital settings in this exercise.

PART THREE: CRIMES AGAINST OLDER PEOPLE: APPLYING THE LAW COMMISSION CRITERIA

Introduction

Enhanced sentencing:

- 3.1 Although the Sentencing Guidelines Council notes that targeting a vulnerable victim because of their old age or youth makes the offender more culpable, and the offence more serious²⁹¹, Action on Elder Abuse produced a substantial body of evidence²⁹² in 2017 to demonstrate that enhanced sentencing is often not applied, with many perpetrators receiving community service or a suspended sentence for what are very serious crimes.
- 3.2 The report from the HMIFRCS confirmed that *‘the CPS has a policy on crimes against older people for those who are over 60 and where certain other features apply – such as where the offender has exploited an expectation of trust. However, beyond the*

²⁸⁹ SafeLives (2016) *Safe Later Lives: Older People and Domestic Abuse*, Spotlights report, London: SafeLives

²⁹⁰ EUROPOL (2015): *Exploring tomorrow’s Organised Crime*. The Hague, NL: Europol

²⁹¹ Sentencing Guidelines Council, *Overarching principles guidelines: Seriousness*, (December 2004)

²⁹² Action on Elder Abuse (2017) *Elder Abuse is a crime, now let’s make it one*, London: Action on Elder Abuse.

*requirement to flag these cases, we found little evidence that the policy was being considered and applied by prosecutors*²⁹³.

- 3.3 But even when enhanced sentencing has been applied it does not get the same recognition, focus or seriousness as the case often merits. It is not perceived at the same level of seriousness as an aggravated hate crime, and it consequently does not have the same effect on either potential perpetrators or victims. That is not to suggest that enhanced sentencing is not a potentially important facet but it lacks the impact of being linked to an aggravated offence.

Comparison with other countries:

- 3.4 See paragraphs 2.158 onward for in-depth analysis of these issues.

Evidence of criminal behaviour

- 3.5 The challenges associated with deriving data from the criminal justice system is covered in paragraphs 2.44 onward.
- 3.6 As indicated previously, the extent of crimes against older people can only be established by considering a number of factors, and these include what is known:
- (a) about those crimes that come to the attention of the criminal justice system,
 - (b) elder abuse prevalence data,
 - (c) adult safeguarding data as it relates to older people,
 - (d) data on hospital failures and major incidents,
 - (e) data on care provision neglect and abuses; and
 - (f) community-based crimes such as anti-social behaviour.
- 3.7 See paragraphs 2.146 (elder abuse prevalence), 2.153 (criminal justice information), 2.158 (evidence from other countries), 2.173 (adult safeguarding information), 2.183 (care provision), 2.188 (hospital and health care), and 2.133 (fraud). These collectively provide a more comprehensive overview of crimes against older people.
- 3.8 The Law Commission consultation document acknowledges that there are aspects of social policy/welfare 'abuse' cases that are potentially criminal when it noted that some elements of elder abuse '*may amount to crimes against older people, for example where this takes the form of sexual abuse, physical abuse, or financial abuse, or wilful neglect if the older person lacks capacity*'.
- 3.9 While it is acknowledged that not all of these crimes would necessarily be motivated by overt hostility or hatred, there is evidence of both serious (i.e. involving death) and less serious cases where hatred and/or hostility was involved, and a significant proportion where it is reasonable to conclude that the criminal acts were motivated by prejudice and/or justified by prejudicial attitudes.

²⁹³ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

- 3.10 With regard to disability, the Law Commission consultation notes that *'There may be a variety of perpetrator motivations that underlie targeting of disabled people. These may include, for example, a belief that the person's disability makes them an easier target, or a general lack of respect for, or dehumanising attitudes towards, disabled people. These motivations may not be easily characterised or proven as "hostility" towards disabled people, even though they may be experienced as such by victims, and wider members of the community.* This would be an equally valid conclusion in relation to age, but this connection is not made in the consultation paper.
- 3.11 However, it is in the context of this wider understanding of crimes against older people that comparisons with other groups should be considered e.g. the Law Commission consultation document notes the collective prevalence of all forms of VAWG is likely to be much higher than the figure of 2.6% elder abuse prevalence, (this percentage being an under-representation - see paragraph 1.91), but this was not an equal comparison i.e. it was not comparing against the collective prevalence of crimes against older people.
- 3.12 As indicated in previous sections, ageism forms both a permissive context²⁹⁴ and a background for the perceptions and motivations of many perpetrators, where prejudicial attitudes have a major impact upon how older people are viewed both collectively and individually within society. This ingrained ageist approach has resulted in descriptive terms (e.g. poor practice, serious untoward incidents, abuse) which effectively marginalise the criminal nature of the acts themselves, triages them out of the criminal justice system, and gives societal permissions for perpetrators to commit acts that may be criminal in nature.

Demonstrable need; the context of elder abuse

- 3.13 See paragraphs 1.79 and 1.89 onward for in-depth analysis of these issues.

Elder abuse is only one facet to the understanding crimes against older people and elder abuse prevalence varies according to the definitions used and different methods to measure it in studies. While it is legitimate and necessary to include elder abuse prevalence data when considering criminal activity against older people, it is also necessary to take into consideration the other ways in which crimes against older people can be identified or recorded (as per paragraph 3.6 above).

Demonstrable need: criminal targeting in other contexts

- 3.14 The Crime Survey for England and Wales does not cover crimes against those not resident in households (e.g. residents of institutions and visitors). It therefore does not reflect the full extent of potential crimes against older people. And in relation to domestic abuse, it does not include individuals older than 79 years (this is quite a recent change from 2018 – previously this was 59 years).

²⁹⁴ Penhale, B. (2010) Responding and Intervening in Elder Abuse, *Ageing International*, 35, 3, 235-252

3.15 Using the CSEW data, the Law Commission consultation noted that 9.2% of those aged 75+ years, and 13.8% of those aged 65-74 years, experience crime, thus suggesting older people are least likely out of all age groups to be crime victims. However, this approach is not consistent with the thrust of the consultation document which defines old age as over 65 years. Consequently, it would be more appropriate to use the total figure of 23% (i.e. all those aged 65+ years) as an indicator, which is then comparable to other age groups²⁹⁵.

3.16 However, the data also indicates that older people are significantly the greatest number of victims of anti-social behaviour in their local area, behaviour that is often associated with hate crime.

ALL ADULTS	All CSEW crime (including fraud and computer misuse)	Personal crime (including fraud and computer misuse)	Experience of ASB in local area	
			Men	Women
16-24	23.7	14.7	23.6	23.9
25-34	22.3	12.8	21.5	23.0
35-44	21.5	11.7	20.9	22.0
45-54	21.1	11.4	21.4	20.8
55-64	19.2	10.8	20.3	18.2
65+	23.0	13.9	25.5	20.8

3.17 It is also worth noting that older people were the second highest to experience personal crime (which included fraud and computer misuse).

3.18 See paragraphs 2.44 and 2.55 onward for an in-depth analysis as to why there are limitations on using current prosecution rates as a means of establishing or comparing the levels of crime committed against older people.

3.19 The Law Commission consultation noted that research by Age UK had found that doorstep crimes were disproportionately committed against older people, with a 2015 report noting that 85% of those who experienced doorstep crimes were aged 65+, 59% were 75+, and 18% were aged 80 to 84.²⁹⁶

3.20 Further the Law Commission consultation noted that, in 2018-19, the CPS prosecuted 2958 crimes against older people – of which 2412 of these resulted in conviction. Offences against the person were the most common type of crime

²⁹⁵ Office for National Statistics (ONS) (2020), *Crime in England and Wales: Annual Trend and Demographic Tables*, London: ONS

²⁹⁶ Age UK (2015) *Only the tip of the iceberg: Fraud against older people*, London: Age UK.

directed at older people, making up 35.5% of those prosecuted. Other common offence types were burglary, theft and handling, as well as fraud and forgery respectively making up 14.8%, 12.2% and 19% of the crimes against older people that were prosecuted.

Is this criminal targeting linked to hostility or prejudice towards old age?

- 3.21 See paragraphs 2.1 and 2.31 and 2.39 for an in-depth analysis of these issues.
- 3.22 In Scotland, Lord Bracadale drew upon information provided by Action on Elder Abuse and found that there was *'sufficient evidence of hostility-based offences against the elderly'*.²⁹⁷
- 3.23 See paragraph 2.78 onward for an in-depth analysis relating to violence against women.

Link between elder abuse and other forms of interpersonal abuse

- 3.24 The Law Commission consultation noted the views of Action on Elder Abuse that *'elder abuse was seldom about a perpetrator hating older people... the problem is much wider than this, involving complex interpersonal and interfamilial relations, and crucially, exploitation of vulnerability.'* (This was in contrast with the views they expressed in the Scottish consultation on hate crime).

Exploitation of vulnerability, as we have discussed previously, may be less the motivation for a crime but rather the means by which it is achieved - vulnerability (or perceived vulnerability) may create the dependency related circumstances that are then exploited by the perpetrator, but it is not necessarily the motivator for the crime.

- 3.25 And, while it is true that some domiciliary related elder abuse (as opposed to some other forms of elder abuse e.g. institutional) may involve complex interpersonal and intrafamilial relations, that does not exclude hatred, hostility or prejudice from being part of those dynamics. (This can be clearly evidenced within some domestic abuse/violence situations).
- 3.26 If it is accepted that hatred or hostility can be/often is part of the motivation of domestic abusers of younger women, with many of those situations involving complex interpersonal and intrafamilial relations, it must be equally valid to acknowledge similar motivations in relation to older people where gender, age, and disability may all be part of the dynamic.
- 3.27 The argument that age is not a factor in either older domestic type abuse or more general elder abuse is to ignore the reality of ageism or the unique characteristic of age. Regardless of whether the vast majority of people will eventually become old,

²⁹⁷ Scottish Govt. (2018) *Independent Review of Hate Crime Legislation in Scotland: Final Report* Edinburgh: Scottish Government.

this does not change the distinctive negative positioning of old age within society, which sets it apart from other ages, thus emphasising difference and ‘otherness’. Ageism primarily influences and affects those people perceived as being old, something that does not often happen with other age groups. It is not possible therefore to be age blind when considering the motivation of some perpetrators of crimes against older people.

Exploitation of actual or perceived vulnerability

- 3.28 See paragraphs 2.1 onward for an in-depth analysis of this issue.
- 3.29 Motivation cannot be explained on the basis of vulnerability alone. Vulnerability may create dependency circumstances, but it cannot explain premeditated cruelty with regard to some crimes against older people, any more than it can in relation to disability hate crime. There are many examples of cruelty and callousness in relation to older people, where vulnerability or opportunism alone cannot provide a satisfactory explanation of motivation. Hostility often manifests as an attitude of contempt coupled with a conscious intention to do harm. This intention manifests in different ways. For instance, a person might express it covertly or through gossip and slander or more explicitly through verbal or physical attacks.²⁹⁸
- 3.30 The Law Commission in their consultation document have pointed out that *‘some have questioned whether an older person’s vulnerability occurs as a result of their age rather than some other factor. The same point can be applied to perceived vulnerability, questioning whether this perception is informed by old age or some other factor’*. This is an approach which inherently denies the impact of ageism and ageist attitudes on both individuals and the older population, but which also singles out one characteristic of a person as being of lesser impact or worth. Effectively, this represents age blindness.

Violence against older women

- 3.31 See paragraphs 2.78 onward for an in-depth analysis relating to violence against women.
- 3.32 A key point here is that acknowledging the gendered element of sexual violence is not incompatible with simultaneously recognising that such crimes can have multiple factors, such as racism or disability hatred or age-related hatred or prejudice. It is not necessary to *‘remove the gendered element of sexual violence’*,²⁹⁹ in order to recognise the complexity of perpetrator motivation in relation to older women, and to acknowledge that motivation can include age prejudice, hostility or hatred. These issues are not incompatible.

²⁹⁸ <https://exploringyourmind.com/hostility-in-a-relationship-is-the-prelude-to-the-end/>

²⁹⁹ Cited in H Bows and N Westmarland (2017) “Rape of Older People in the UK, Challenging the ‘real rape’ stereotype”, *British Journal of Criminology*, 57, 1, 1-17

3.33 If we can accept the argument articulated in the Law Commission consultation that the law is not capturing behaviour directed at disabled people where there is a belief (whether true or not) that the victim’s disability makes them an easier target – for example for financial or sexual exploitation - it should not be incompatible that a similar argument is valid in relation to age and older people.

Absolute prevalence

3.34 A 2017 study combined the results of multiple studies and estimated that globally, 1 in 6 older people (17%) living in private residences were facing some form of sexual, psychological or physical abuse each year.³⁰⁰

3.35 Systematic reviews and meta-analyses of recent studies on elder abuse in both institutional (2) and community settings (1) based on self-reporting by older adults suggests that the rates of abuse are much higher in institutions than in community settings:³⁰¹

Types of abuse	Community	Institution Reported by By older adults	Reported by By Staff
Psychological abuse:	11.6%	33.4%	32.5%
Physical abuse:	2.6%	14.1%	9.3%
Financial abuse:	6.8%	13.8%	Not enough data
Neglect:	4.2%	11.6%	12.0%
Sexual abuse:	0.9%	1.9%	0.7%

3.36 See paragraphs 2.146 (elder abuse prevalence), 2.153 (criminal justice information), 2.158 (evidence from other countries), 2.173 (adult safeguarding information), 2.183 (care provision), 2.188 (hospital and health care), and 2.133 (fraud). These collectively provide a more comprehensive overview of crimes against older people.

3.37 There is no nationally published police data that sets out or records how many older people in England and Wales are the victims of crime.³⁰² The number of crimes against older people that reach the attention of the police, and are subsequently prosecuted, are likely to represent only a small percentage of the reality older people face.

3.38 Age is not one of the five annually monitored hate strands across England, Wales and Northern Ireland but Stop Hate UK has been recording data on this type of Hate

³⁰⁰ Yon, Y., Mikton, C., Gassoumis, Z. and Wilber, K. (2017)“Elder abuse prevalence in community settings: A systematic review and meta-analysis” *The Lancet Global Health* 5, (2), 147-156

³⁰¹ World Health Organisation (2020) WHO factsheets: Elder Abuse key facts, Geneva: WHO (factsheets available online via <http://www.who.int>)

³⁰² HMICRFS (2019) *The Poor Relation: police and CPS response to crimes against older people*. London: HMICRFS

Crime for many years. Stop Hate UK believes that Age Hate Crimes are seriously under-reported and that many victims are suffering in silence.³⁰³

Type of Incident	Q1	Q2	Q3	Q4	Total
Criminal Damage	0	1	1	1	3
Excluded or Ignored	0	0	1	0	1
Physical Attack on Person	0	1	0	1	2
Threatening Behaviour	0	5	0	3	8
Verbal Abuse	2	6	1	2	11
Other	1	3	0	2	6
Total	3	16	3	9	31

Table 17.3: Motivations for hate crime in previous 12 months by impairment status, 2009/11

Adults aged 16 and over

Motivations for hate crime	Percentage of adults without impairment	Percentage of adults with impairment	Percentage of all adults
Age	6	9	8
Sex	4	6	5
A health condition, illness or impairment	3	15	8
A disability	..	18	8
Ethnicity	45	27	37
Religion	7	9	8
Sexual Orientation	13	8	11
None of these reasons	30	34	32
Sample size (=100%)	270	250	520

NOTE:

1. See the Introduction of this report for the definition of impairment status.
2. Respondents were asked to select all motivations that applied to them from the list of options provided. All respondents regardless of impairment status could select these response options.

Source: Life Opportunities Survey, Wave 1 results 2009/11 Office for disability issues

- 3.39 In 2017/18 there were 1,899 recorded cases of criminal damage involving complainants aged 60+ in Northern Ireland. For 2017/18 the rate of recorded cases of criminal damage for those aged 60-64 was 7 per 1,000 of the population and for those aged 65+ it was 4 per 1,000 of the population. Criminal damage offences make up a higher proportion of recorded crimes for older people than other adults (in 2017/18 20-54 22%, 55+ 28%, 60+ 28% and 65+ 27%).
- 3.40 It is within the older age categories that the largest increases in police records on violence without injury have occurred in Northern Ireland. In 2017/18 there were 543 recorded crimes of violence with injury involving complainants aged 60+. The number of recorded incidents of violence with injury involving those aged 60+ is 97% higher than in 2007/08 when 275 incidents were recorded. 2017/18 recorded the

³⁰³ StopHate UK. (2014) *Faith is welcome, hate is not*, London: StopHate UK.

highest number of violence with injury offences against complainants aged 60+ in the last eleven years.³⁰⁴

- 3.41 In Europe, though 28 per cent of women aged sixty and older reported experiencing some form of abuse in the previous twelve months (including 3.1 per cent reporting sexual violence), the majority of survivors did not disclose or seek help for their abuse (Luoma *et al.*, 2011).³⁰⁵
- 3.42 In a five-country European study, Luoma *et al.* (2011) reported that, overall, 28.1 per cent of women aged sixty to ninety-seven had experienced some form of violence or abuse in the previous year. In most cases, the perpetrators of emotional abuse, financial abuse sexual abuse and violation of rights were the women's partners or spouses. Data published by the ONS (2018) report that, in the year ending March 2017, there were sixty-four homicides of people aged sixty-five and over. Within this number, there was a disproportionately high number of female victims aged seventy-five and over compared with the whole population profile (13 per cent of female homicide victims were aged seventy-five and over, whereas 9 per cent of the female population was in this age group).³⁰⁶
- 3.43 Using the CSEW data, the Law Commission consultation noted that 9.2% of those aged 75+ years, and 13.8% of those aged 65-74 years, experience crime, thus suggesting older people are least likely out of all age groups to be crime victims. However, this approach is not consistent with the rest of the document which defines old age as over 65 years. Consequently, it would be more appropriate to use the total figure of 23% (all those aged 65+ years) as an indicator, which is then comparable to other age groups.³⁰⁷
- 3.44 In view of the above, there is a substantial body of evidence to indicate that crimes against older people are far more extensive than is suggested by the current limited data available through criminal justice monitoring. While not all of these crimes are necessarily suitable for prosecution, and not all could be considered as motivated by hatred, hostility or prejudice, there is evidence that a proportion would be covered by these criteria.
- 3.45 Certainly, when looking at the information from the perspective of those types of crimes considered to fall into a hate category in relation to other defined groups (e.g. people with disabilities), together with those examples evidenced in the attached

³⁰⁴ Brown, K. and Gordon, F. (2019) *Improving Access to Justice For Older Victims of Crime: Older People as Victims of Crime and the Response of the Criminal Justice System in Northern Ireland*. Belfast: Commissioner for Older People for Northern Ireland.

³⁰⁵ Luoma, M.L., Koivusilta, M., Lang, G., Enzenhofer, E., De Donder L., Verté, D., Reingarde, J., Tamutiene, I., Ferreira-Alves, J., Santos, A. J. and Penhale, B. (2011) *Prevalence study of abuse and violence against older women: Results of a multicultural survey in Austria, Belgium, Finland, Lithuania, and Portugal* (European report of the AVOV project). Helsinki: National Institute of Health and Welfare (THL).

³⁰⁶ Bows, H. (2018) Domestic homicide of older people (2010-15): a comparative analysis of intimate partner homicide and parricide cases in the UK, *British Journal of Social Work*, 24, (2), 1070-1090

³⁰⁷ Office for National Statistics (2020) *Crime in England and Wales: Annual Trend and Demographic Tables*, London: ONS - Available from: <https://www.ons.gov.uk/>

appendices, there is sufficient evidence to suggest a potentially significant proportion of these crimes would be based upon hatred, hostility or prejudice. The information would support the argument that there is a strong trend towards violence or abuse of older people.

- 3.46 Conclusion: When the totality of crimes against older people are considered, including definitions of elder abuse that reflect the full range of potential crimes and perpetrators, together with the data that is available both nationally and internationally, it is evident that a significant proportion of older people are affected by crime.

Relative prevalence

- 3.47 In statistical terms, UK data suggests the prevalence of elder abuse (and potentially crimes against older people) is likely to be at least 8.6% (998,000 people) within a range of 7.2% to 10.3%. This tallies closely with polling undertaken by AEA in February 2017, in which 9.3% of older people reported having experienced some form of abuse, equivalent to 1,080,000 people.^{308 309} However, recent WHO figures fairly solidly suggest that globally around 1 in 6 older people have experienced abuse (17%), and more recent polling by Action on Elder Abuse in December 2020 suggests 1 in 5 older people (22% or an estimated 2.5 million people) are affected by elder abuse.
- 3.48 The challenges associated with deriving data from the criminal justice system have been covered in paragraphs 2.44 onward. Due to such difficulties, current prosecution figures are insufficiently reliable to be used as comparisons with other population groups.
- 3.49 Iparraguirre undertook an analysis of available CPS data in 2014 to specifically consider hate crime against older people. In it he noted that, *'the crime statistics in the CSEW indicate that younger people are more likely to experience crime, and the likelihood of experiencing crime decreases with age. One reason for this is that many violent and public order offences (which make up 39 percent of all recorded crimes) take place on streets or other public places in the evenings or at night, when older people are less often outside'*.
- 3.50 The CSEW does not include people living in places like care homes (in 2011, it was estimated that 291,000 people over 65 were living in care homes³¹⁰), and has an upper age limit of 75 for crimes of intimate violence.³¹¹ Iparraguirre suggested that age-motivated hate crime (Figure 1) is more prevalent than gender-motivated hate

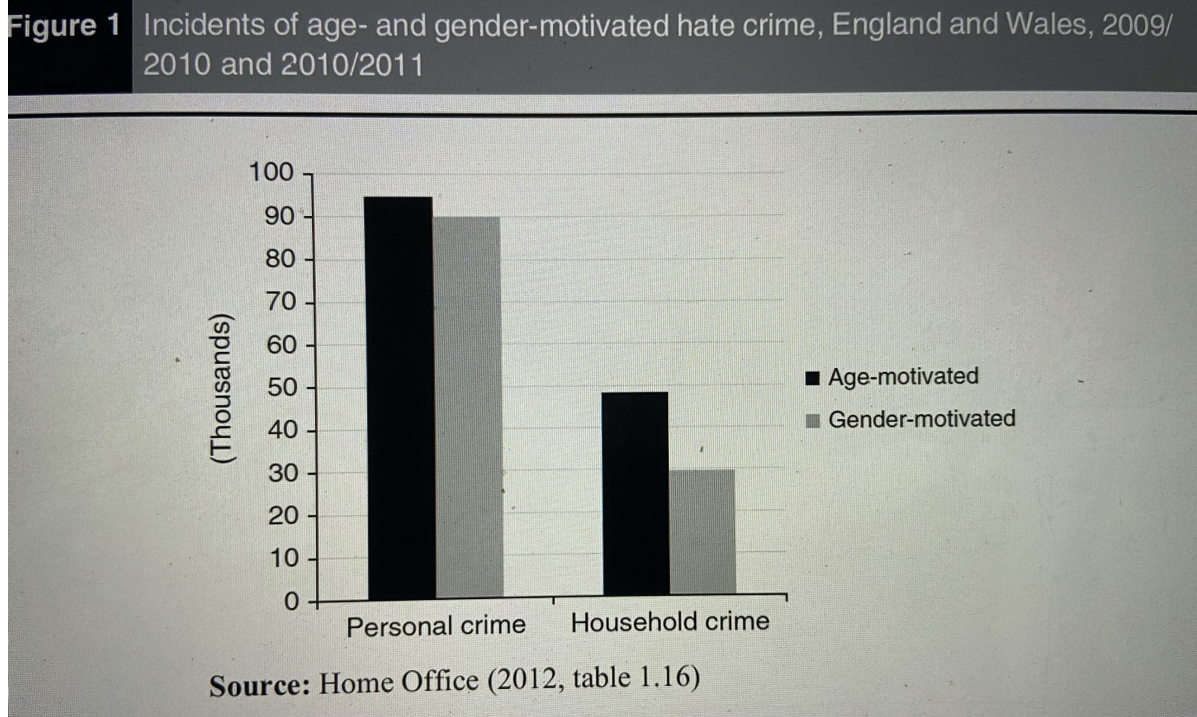
³⁰⁸ Action on Elder Abuse (2017) *A patchwork of Practice*, London: Action on Elder Abuse

³⁰⁹ The extrapolations shown are based on the population data for older people at that time. Consequently, transposing the percentage figure onto the data at population level suggests its equivalent in population numbers.

³¹⁰ <https://tinyurl.com/yd96czf6>

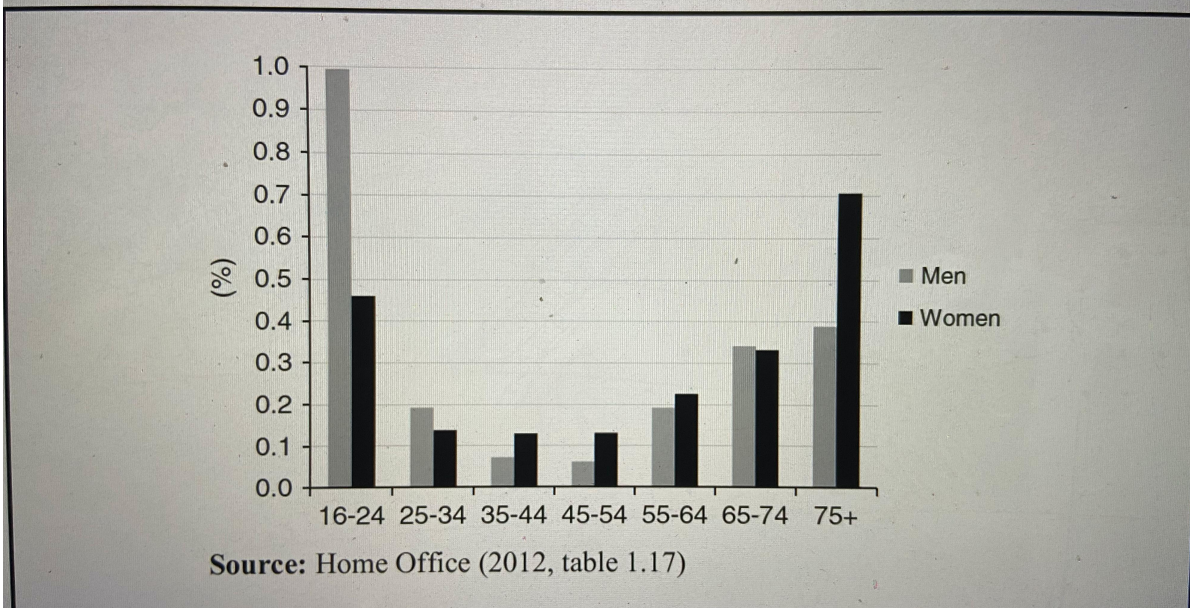
³¹¹ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

crime in England and Wales, for both main types of incidents – i.e. personal and household crime. Figure 2 shows a clear positive gradient by age after the mid-50s in the incidence of age-motivated hate crime if we exclude men aged between 16 and 24. That is, people older than 55 are more likely to be targeted because of their age than younger people (excluding men aged 16-24) and increasingly more the older they are.³¹²



³¹² Iparraguirre, J-L. (2014) Hate Crime against Older People in England and Wales- an econometric study, *Journal of Adult Protection*, 16, (3), 152 - 165

Figure 2 Proportion of adults who were victims of age-motivated hate crime by age group and sex, England and Wales, 2009/2010 and 2010/2011



- 3.51 Additionally, Iparraguirre concluded that, ‘according to the parameter estimates and their statistical significance, the more “problematic” an area in terms of all the other types of hate crime, the higher the level of hate crime against older people. This is the variable with the greatest explanatory power of reported hate crime activity against older people. We found that how “problematic” the area may be with regards to hate crime in general has a bearing on the level of hate crime against older people. The higher the proportion of young people, or of older people, residing in the area, the higher the level of hate crime against older people – once all the other variables under study have been accounted for. Furthermore, the more deprived the area, the higher the number of episodes of hate crime against older people. Criminal activity against older people could be reduced by higher successful conviction rates.’³¹³
- 3.52 Bows has sought to challenge the conclusions of Iparraguirre,³¹⁴ pointing out that the Home Office had cautioned that ‘estimates of age-motivated hate crime in particular should be treated with caution, as it is possible, for example, that older victims who may be targeted for their age-related vulnerability, are answering that the incident was motivated by the offender’s attitude towards their age rather than this vulnerability.’ However, this is based on a presumption by the Home Office that the older people who had participated in the survey had misunderstood the questions asked, an assumption not made about any other respondents or age groups. No follow up research had been undertaken to substantiate this conclusion, which was possibly based on a need to explain an unexpected outcome.

³¹³ Iparraguirre, J-L. (2014) Hate Crime against Older People in England and Wales- an econometric study, *Journal of Adult Protection*, 16, (3), 152 - 165

³¹⁴ Bows, H. (2020) *Is more law the answer?* (discussion document). See also: Bows, H. (2020) Violence and abuse of older people – a review of current proposals for criminalisation, *Crim. Law Review*, (10), 882

- 3.53 Conclusion: In terms of relative prevalence of crimes against older people it is reasonable to conclude that this is significant, both in terms of percentage of older people affected and also compared with other groups. None of the data available reflects the totality of crimes against older people and all have limitations, which need to be taken into consideration in any comparisons being made.

Severity

- 3.54 All crimes against older people have a potentially greater impact on individuals' physical and mental wellbeing than that experienced by other age groups, with high levels of incidence of death following crimes such as theft or fraud - an outcome that rarely happens with younger people unless serious physical assault also occurred. A hate crime is likely to have an equal or greater impact. *'Some older victims have died after being victimised, and this may be because the crimes had different effects on them than on younger victims or those in better health'*.³¹⁵
- 3.55 Compared with younger adults, older people are physically weaker, and even a minor injury could therefore have very severe consequences and result in longer convalescence. The immediate physical effects include assault injuries ranging from bruises to broken bones and head injuries, persistent physical pain and soreness, poor nutrition and dehydration, sleep disturbances and increased susceptibility to new illnesses.³¹⁶
- 3.56 It is also worth noting that elder abuse has been implicated in premature mortality, which may not only be caused by frailty but also comorbid conditions that may be further exacerbated.³¹⁷ In one seminal study from the United States, violent assaults accounted for 14% of trauma patients older than 64 years, and these injuries were reported to more likely result in death than among younger people.³¹⁸
- 3.57 Where there is an expectation of trust, the abuse of this trust – whether criminal or not – can be deeply damaging and especially hurtful to the victim. So, there are after-effects and longer terms sequelae of abuse that last far longer than the consequences that statistics necessarily provide at a certain point in time.³¹⁹
- 3.58 Robbing an older man who is frail and has cognitive difficulties is likely to have a greater impact on the victim than robbing a younger man with no health issues. Current approaches taken fail to recognise the impact on the older person, which can be devastating in relation to a person's physical and mental health, and their ability to live independently. Compared with younger adults, older people are generally physically weaker, and even a minor injury could therefore have major

³¹⁵ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London

³¹⁶ Ahmad M, Lachs M.S. (2002) Elder abuse and neglect: what physicians can and should do. *Cleveland Clinic Journal of Medicine*, 69 (10) 801–808.

³¹⁷ Lachs, M.S. et al. (1998) The mortality of elder mistreatment. *Journal of the American Medical Association*, 280: 428–432.

³¹⁸ Collins K, A. (2006) Elder maltreatment. A review. *Archives of Pathology and Laboratory Medicine*, 130: 1290 – 1296.

³¹⁹ Action on Elder Abuse (2017) *A Patchwork of Practice*, London: Action on Elder Abuse

consequences and result in a need for an increased period of convalescence and recovery.³²⁰

EXAMPLE: Four youths wearing masks attacked an older male victim using a mobility scooter. The victim was sprayed in the face with an unknown substance and pushed off his scooter. He reported the offence the next day and was terrified, injured and confused. Despite living on his own without any care or support, the victim was not visited until the following day. The police later noted that the attack had left the victim shaking, fearful and scared to go out at night. No safeguarding referral was made, and this omission was not picked up by supervisors.³²¹

- 3.59 Additionally, compared with violent crime victims in other age groups, older victims of non-lethal violence are less likely to use self-protective measures, such as arguing with the offender, running away, calling for help, or attacking the defender. In fact, individuals in the sixty-five and over age categories are the least likely of all age groups to use self-protective measures to protect themselves from the violent actions of others.³²²
- 3.60 Research by Bows noted, *'Both the physical and emotional effects of sexual violence (against older people) were thought to result in a number of lifestyle changes for older survivors leading to social isolation (Lachs & Pillemer, 2004). Practitioners referred to the development of agoraphobia, altered relationships with family or friends, and disengagement from support organizations.'* One participant suggested, *'For younger women it is easier to move on but older women will totally change their behavior.'*³²³
- 3.61 This research also suggested that the emotional challenges (of sexual violence against an older woman) mirrored those of younger survivors: a sense of shame, fear, anxiety, and self-blame (K. G. Weiss, 2010 cited in Bows, 2017). However, practitioners felt that emotional challenges were magnified for some older survivors because the prevailing cultural norms in their earlier lives serve to inhibit disclosure or discussion of sexual violence (Fivush, 2010, cited in Bows, 2017). In particular, practitioners felt sexual violence carried a lot of stigma for the victim: *'The stigma that they are older. The shame. Again, it is a generational thing. They keep it from their children and having to go through that process. The whole process is horrific and for an older woman, having swabs and people coming and looking at your body.'*
- 3.62 The impact of fraud can be shattering. Some older people lose their life savings, which they worked decades for and were meant to provide for their retirement.

³²⁰ Action on Elder Abuse (2018) *Submission to the Independent Review of Hate Crime Legislation in Scotland*, London: Action on Elder Abuse

³²¹ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

³²² Hull, H. G. (2009) The Not-so-golden years: why hate crime legislation is failing a vulnerable ageing population, *Michigan State Law Review*, 2009, (2), 387-416

³²³ Bows, H. (2017) Practitioner views on the impacts, challenges and barriers in supporting older survivors of sexual violence, *Violence Against Women*, 24, (9), 1070-1090

Even relatively small losses can be devastating to the victim. In AGE UK polling, *'around 1 in 8 of those who lost money (13%) lost more than £1,000, while a quarter (23%) lost less than £100. In the case of older people in vulnerable circumstances, the impacts can go beyond money, affecting their physical and mental health too. This can even mean that someone who was living at home independently is no longer able to'*.³²⁴ In addition, following such fraud, an older person may not be able to rebuild their savings over a period of time.

- 3.63 The Think Jessica charity reports that the impact of scams can include depression, withdrawal and isolation from family and friends and the deterioration of physical and mental health. People defrauded in their own homes are 2.5 times more likely to either die or go into residential care within a year, and in some cases victims have considered, attempted or committed suicide.³²⁵
- 3.64 The SCIE report on elder financial crime cites a report by Rabiner et al (2006) indicating that financial abuse may leave older people depressed, socially isolated and more vulnerable to further exploitation. Additionally, due to a lack of earning potential, older people may be also unable to replace lost savings (Walsh and Bennett, 2000, cited in SCIE, 2011).³²⁶
- 3.65 Following sexual abuse, family members report that daily realities and experiences can differ from older people's behaviour before the abuse, and become enduring reactions afterwards. Such behaviours include fears of going to sleep, nightmares, suffering from incontinence following the assault, fear of acquiring a sexually transmitted disease, anxieties about leaving their residence, decreased enjoyment of social activities such as visiting friends or shopping. Memories of the perpetrator can surface as unwanted or intrusive thoughts. Some elders clothe themselves with layers of clothing or refuse to put on nightclothes. Several residents in nursing homes made escape attempts following the abuse.³²⁷
- 3.66 Being victimised can also have a significant and often long-lasting impact on older people. *'For many victims, it had led to a heightened awareness of their own vulnerability. While there is apparently less likelihood of older people becoming victims of crime, the effect on these victims may therefore be more severe. This is especially so if the victims are suffering from mental and/or physical disabilities'*.³²⁸
- 3.67 Conclusion: Being the victim of a crime has a greater effect on older people, both in terms of both physical and psychological impacts. Even 'minor' crimes such as theft or fraud can result in premature death, an outcome highly unlikely in younger age groups. Exploiting an expectation of trust, engaging in prejudicial or hostile actions

³²⁴ Age UK (2018) *Applying the Brakes, Slowing and stopping fraud against older people*, London: Age UK

³²⁵ <https://www.thinkjessica.com/shocking-facts/>

³²⁶ SCIE (2011) *Assessment: financial crime against vulnerable adults*, SCIE report 49, London: SCIE

³²⁷ Burgess, A. (2006) *Elder victims of sexual abuse and their offenders*, NCJ Report 216550 (Available from: <https://www.ncjrs.gov/app/abstractdb/AbstractDBDetails.aspx?id=238168>)

³²⁸ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

based on the age of the victim, is not only a reminder of vulnerability and possible frailty, but also has a direct impact on feelings of worth and perceptions of self and self-esteem.

Additional Harm to the primary victim

- 3.68 The Law Commission consultation has noted research which illustrates that hate crime has a more serious impact on primary victims than differently motivated crime. As an example, primary victims of hate crime might experience symptoms such as anxiety or depression after the crime for a longer period.
- 3.69 The document also noted that one possible reason for hate crime's capacity to cause greater harm is because it can compound disadvantage that the victim or wider group already experiences based on the targeted characteristic. For these purposes, they define disadvantage is defined with reference to systemic conditions that negatively impact, or have historically negatively impacted, certain groups because of a characteristic they share.
- 3.70 See paragraphs 1.11 onwards for an in-depth analysis of the impact of ageism on older people, and paragraphs 1.56 for an in-depth analysis of the impact of COVID19 decisions on older people, indicating the scale of systemic conditions that negatively impact on older people. As noted in the consultation document targeting of older people, through prejudice or hostility, might replicate, and in turn compound, these ingrained discriminatory attitudes which imply that the lives of older people are somehow less valuable to society (an issue particularly apparent during the first wave of the COVID19 pandemic).
- 3.71 Elsewhere (including in the section on *Severity* above) there is evidence of the increased impact of crime on older people. Such effects include feeling frightened or unsafe, anxiety, depression, loss of confidence and self-esteem, sleep difficulties, concentration difficulties, and suicide.
- 3.72 Being a victim of crime can cause older people emotional, psychological, physical and financial harm, which has the potential to severely undermine quality of life and exacerbate inherent physical and mental disabilities and social disadvantage.³²⁹
- 3.73 The Law Commission consultation noted that research by Age UK indicates that people defrauded in their own homes are 2.5 times more likely to die or go into residential care within a year.³³⁰ This situation (living alone) disproportionately impacts people above the age of 75, with over half of people 75+ years old living alone.³³¹ The Commission observed that 'clearly death and a decline in health necessitating residential care are very severe forms of harm'.

³²⁹ Brown, K., & Gordon, F. (2019). *Improving Access to Justice For Older Victims of Crime: Older People as Victims of Crime and the Response of the Criminal Justice System in Northern Ireland*. Belfast: Commissioner for Older People for Northern Ireland.

³³⁰ Age UK, (2017) *Older People, Fraud and Scams*, London: Age UK

³³¹ Age UK, (2017) *Older People, Fraud and Scams*, London: Age UK

3.74 The Law Commission consultation also drew attention to research by the Centre for Counter Fraud Studies that noted older people can experience "anger, stress, upset, ridicule and embarrassment" from their experiences of fraud, leaving them isolated and afraid.³³² These emotional reactions, particularly anger and shame, are commonly associated with the reaction that primary victims have to hate crime.

3.75 Additional points from the Law Commission included:

- Research commissioned by HMICFRS indicated that the impact of crime can increase with age. They noted that younger victims typically reported their crime having less of an impact on them and their daily life compared to those aged 80 and over. Those typically aged 80 and over did not have the same opportunities to distract themselves as did younger people. These participants described constantly reflecting on the crime, leading them to feel upset and more nervous about future incidents
- The World Health Organization notes that elder abuse can result in serious, sometimes long-lasting psychological consequences, including depression and anxiety. They also observe the significance of physical harm in the context of elder abuse. For older people, the consequences of abuse can be especially serious, and the recovery time can be longer. Even relatively minor injuries can cause serious and permanent damage, or even death. A 13-year follow-up study found that victims of elder abuse are twice more likely to die prematurely than people who are not victims of elder abuse.³³³

3.76 Consequently, older people who are targeted because of their age, whether or not that is made easier through real or perceived vulnerability, will be impacted to a greater extent than others who may experience the same types of crimes. There are many examples where the exploitation of trust led to serious additional consequences for the older victims, and this will be equally significant in hate crime situations.

EXAMPLE: Frankie Yeoman, an agency supplied carer, won the trust of Beryl and Mervyn Bevan by lavishing them with cakes to obtain the pin number of their bank card. But suspicions were raised by their daughter who said: "We took mum to the bank and got a mini statement. What we found was day after day cash withdrawals were being made from an ATM of hundreds of pounds." The couple were so traumatized by what had happened that they were admitted to separate care homes, the first time they had been separated in 63 years of marriage. During the trial Mervyn Bevan died without seeing his wife again. "Nobody would want the ending that we had for our parents as a result of this," said Ms Bevan, "As a result of this crime, their lives were torn apart." Yeoman was found guilty of eight counts of

³³² Coughlan, S. (2018) "Hidden 'shame' of elderly scam victims" (October 2018) BBC News

³³³ World Health Organisation (2018) *WHO factsheets: Elder abuse: key facts* (factsheets available online)

fraud and one of theft, and was given a six-month sentence suspended for two years and 300 hours of community service.

Secondary Harm

- 3.77 In the context of secondary harm the Law Commission consultation suggests a disparity between fear of crime (high) among older people and the actual level of crime (low), which is referred to as the “victimization-fear-paradox”. They suggest that these fears ‘*might be linked to other situational factors – such as loneliness and reduced social participation, which are not necessarily features of old age.*’ However, these suggestions are not based on research or evidence related to the cause of such fears.
- 3.78 At a common sense level, people who feel unable to protect themselves, either because they cannot run fast, or lack the physical prowess to ward off attackers, or because they cannot afford to protect their homes, or because it would take them longer than average to recover from material or physical injuries might be expected to ‘fear’ potential crime more than others.³³⁴ Increased fear of crime in the older population in significant part may be due to the fear of the impact of being a victim of crime, rather than simply the risk of the likelihood of being a victim. In this sense, heightened fear of crime in the older population is a completely rational response.³³⁵
- 3.79 See paragraphs 2.146 (elder abuse prevalence), 2.153 (criminal justice information), 2.158 (evidence from other countries), 2.173 (adult safeguarding information), 2.183 (care provision), 2.188 (hospital and health care), and 2.133 (fraud). These collectively provide a more comprehensive overview of crimes against older people.
- 3.80 Interviews carried out by Age UK with people who had been scammed or targeted show that fear of further fraud incidents can cause people to disengage from technology. This can exacerbate isolation and work against people being able to live independently at home.³³⁶
- 3.81 “*I don’t open the door to anyone now. I always had the doors open in the summer. It’s changed me a lot ... I’m certainly more cautious.*” (Older victim of physical abuse, 81)

The fact that many older victims experience crimes in their homes can increase feelings of anxiety and distress. It could also make older people feel that they are imprisoned in their homes and are easy targets for criminals.³³⁷ This is important,

³³⁴ Hale, C. (1996) ‘Fear of Crime: A Review of the Literature’. *International Review of Victimology*, 4: 79-150.

³³⁵ Brown, K. and Gordon, F. (2019) *Improving Access to Justice For Older Victims of Crime: Older People as Victims of Crime and the Response of the Criminal Justice System in Northern Ireland*. Belfast: Commissioner for Older People for Northern Ireland.

³³⁶ Age UK (2018) *Applying the Brakes, Slowing and stopping fraud against older people*, London: Age UK

³³⁷ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

because this apprehension may mean that older victims change their behaviour – for example, not leaving their homes, so avoiding the possibility of being victimized.³³⁸

- 3.82 Research by Help the Aged showed that nearly half of those surveyed aged 75 and over were too afraid to leave their home after dark because they believed they would suffer verbal abuse or mugging.³³⁹ *It was evident in focus groups that those living in the same community had ongoing discussions about other older people who had experienced victimization.*³⁴⁰ This indirect impact is age related and has major impact on older people.
- 3.83 Claire Keatinge, the former Commissioner for Older People for Northern Ireland observed in a 2014 statement: *Crime against older people is universally condemned across our society and although the level of violent crime and burglary against older people is relatively low ... each incident is traumatic for the victim and causes fear amongst the wider population. Older people deserve to have confidence to feel safe in their communities and in their homes.*³⁴¹
- 3.84 It is also worth noting that the older population is more vulnerable to the risks of secondary victimization, where victims suffer stress or trauma when they participate in the justice system. The older population has higher levels of vulnerability to crime with lower levels of resilience to deal with the trauma that being a victim of crime can bring. This may be also coupled with the subsequent stress of engagement with the justice system.³⁴²
- 3.85 This ‘secondary victimisation’, occurs not as a direct result of a criminal act but because of the inappropriate or negative response of individuals and institutions to the victim. For example, this may happen where professionals lack the necessary knowledge, training and/or experience to respond appropriately to the needs of older victims, especially when these victims have additional complex needs.³⁴³
- 3.86 One study revealed that the older people are concerned with becoming targets for hate crime due to their age more than any other characteristic. Thus, when a defendant targets an older victim, members within the elderly community suffer

³³⁸ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

³³⁹ <https://tinyurl.com/y426vuvw>

³⁴⁰ Brown, K. and Gordon, F. (2019). *Improving Access to Justice For Older Victims of Crime: Older People as Victims of Crime and the Response of the Criminal Justice System in Northern Ireland*. Belfast: Commissioner for Older People for Northern Ireland.

³⁴¹ Brown, K. and Gordon, F. (2019). *Improving Access to Justice For Older Victims of Crime: Older People as Victims of Crime and the Response of the Criminal Justice System in Northern Ireland*. Belfast: Commissioner for Older People for Northern Ireland.

³⁴² Brown, K. and Gordon, F. (2019). *Improving Access to Justice For Older Victims of Crime: Older People as Victims of Crime and the Response of the Criminal Justice System in Northern Ireland*. Belfast: Commissioner for Older People for Northern Ireland.

³⁴³ Clarke, A. H., Wydall, S., Williams, J. R., & Boaler, R. R. (2012). *An Evaluation of the ‘Access to Justice’ Pilot Project*. Cardiff: Welsh Government. <http://wales.gov.uk/docs/caecd/research/121220accesstojusticeen.pdf>

secondary impacts of the crime because they have no way of changing the characteristic that was targeted: age.³⁴⁴

- 3.87 The impact of abuse and neglect in care homes, some of which could be reasonably considered to be motivated by hostility or prejudice, (see paragraph 2.182 onward) has resulted in fear among the older population of being ‘taken into care’. While some resistance to residential care support might be due to anxiety about loss of independence, abilities or control, or of increased dependency, the context is one in which people are fearful of a system that has had high profile examples of cruelty, assault and lack of care. Media reporting of such institutional abuse and neglect may not assist with this situation and such perceptions.
- 3.88 The Law Commission consultation noted that the notion that older people have been regarded as less valuable throughout the COVID19 pandemic has also been raised in the context of care homes. A report published by the National Audit Office³⁴⁵ found that between 17 March and 15 April 2020, around 25,000 people were discharged from the NHS to care homes and that “not all patients were tested for COVID-19 before discharge” which meant that some transmission of the virus was likely to take place to previously unexposed/protected care home residents.
- 3.89 The extreme decisions taken in relation to older people and COVID19 (see paragraph 1.56 onwards) has created a significant belief amongst older people that their lives have lesser worth and that they will be denied healthcare support if they contract the virus. This has had an impact on the way in which they interact with society more generally, as it has created an increased fear of becoming infected, not only because of the potential serious impact of the virus itself, but also because individuals believe that they may be denied treatment and ‘allowed’ to die.
- 3.90 The Law Commission consultation noted these points, drawing attention to the policy and media reactions to COVID19 which, it is argued, has revealed the lower value placed upon older people in society. The document points to a report by Human Rights Watch, which had reported that, *‘in addition to the greater risk of severe illness and death from the virus, discriminatory attitudes and actions threaten older people’s rights. A United Kingdom newspaper opinion piece about the economic impact of the coronavirus said that the death of older people might actually be beneficial by “culling elderly dependents... (sic).’*³⁴⁶
- 3.91 There have been a number of high-profile cases (see paragraph 1.19) involving the targeting of older people for either rape or murder. The impact of a case such as

³⁴⁴ Hull, H_G. (2009) The Not-so-golden years: why hate crime legislation is failing a vulnerable ageing population, *Michigan State Law Review*, Vol 2009, (2), 387

³⁴⁵ Costa-Font, J. (2020) “The Covid-19 crisis reveals how much we value old age” (April 2020) *London School of Economics Business Review Blog*: Available from: <https://blogs.lse.ac.uk/businessreview/2020/04/15/the-covid-19-crisis-reveals-how-much-we-value-old-age/>

³⁴⁶ Human Rights Watch (2020) *Rights risks to older people in COVID-19 response*. Available from: <https://www.hrw.org/news/2020/04/07/rights-risks-older-people-covid-19-response>

Delroy Grant (known as the nightstalker) was to strike fear into the older community of South London for several years until he was caught and prosecuted.

- 3.92 Media reports of cases where older people are deliberately targeted (see Appendix A) for crimes such as befriending to steal, threatening to infect older people with COVID19, verbal abuse, sexual assault, antisocial behaviour and even random physical assault, all create an environment of fear and anxiety amongst other older people. Such reporting affects other individuals in later life, who can relate to the experiences, be fearful for themselves, and change their lifestyles and behaviours in response.
- 3.93 In that context, even small numbers of such crimes being reported, can have a disproportionate impact on older people if they subsequently develop a fear of the impact on themselves (see 3.78 above).

Harm to society

- 3.94 In order to evaluate the harm to society caused by hate crime toward older people we need to firstly understand and accept the impact of ageism on societal and individual perceptions and motivations. This is covered extensively in paragraphs 1.11 onward but some key points are
- a) Ageism has a major impact on policies, attitudes and systems within society, creating an inherent prejudice against older people. Irrespective of how they may perceive themselves, in the context of hate crime the issue is more about how society views them, and how individual crime perpetrators may view them. Perpetrators of crimes against elderly people intentionally select their victims because of the victim's status as members of the older population.³⁴⁷
 - b) Ageism assumes a different pattern from some other forms of prejudice. In certain situations, or when thinking of particular contexts, people generally seem to be less cautious about expressing age prejudice explicitly (Nelson, 2002). In this way, it is quite distinctive from prejudice based on race or gender, and to that extent it is more accepted and tolerated and consequently can have a more insidious impact.
 - c) Older people can be seen as an intergenerational threat, which can establish a justification in the eyes of some potential perpetrators that older people are a legitimate target, particularly with increased media attention in the last few years around perceptions that older people are economically better

³⁴⁷ Hull, H-G. (2000) The Not-so-golden years: why hate crime legislation is failing a vulnerable ageing population, *Michigan State Law Review*, Vol. 2009, (2), 387

protected³⁴⁸, that they are responsible for the Brexit result³⁴⁹, that they have not taken their 'fair share' of the recession/COVID financial consequences³⁵⁰.

- d) Hate crimes do not occur in a vacuum; they are a violent manifestation of prejudice, which can be pervasive in the wider community. Ageism is endemic within our society, it creates a stereotype of older people who are collectively perceived as frail and vulnerable, an economic and health burden, and a reminder of mortality. It is of concern that 'age-based discriminatory practices can be found throughout society ... pervading the fields of culture; physical appearance; public image; language; media and advertising; work; and healthcare' (Ray et al., 2006: 9).³⁵¹
- e) Additionally, ageism provides societal permissions for organisations and people to act in ways that dehumanize older people, that allow levels of poor-quality care in social and healthcare services that in some cases become criminal in nature but often occur without any prosecution. Elder abuse occurs in a social context in which older people are not valued. Ageism acts as a master status in which what happens to older people does not matter – and negative consequences, such as elder abuse, are permitted.³⁵² Instead, they are stigmatised by, and marginalised from, mainstream society in a fashion similar to that of the existing recognised hate crime victim groups (Perry, 2009).³⁵³

3.95 Secondly however we have to acknowledge the extent of crimes against older people, and then perceive them through the three possible variables utilised by the Law Commission consultation: hatred, hostility and prejudice. While it may be difficult to argue that many such crimes are a direct consequence of outright hatred, although there may be cases where this is a reality, it is much easier to identify hostility in an increasing number, and of prejudicial motivation in many cases. The question posed earlier is valid in this context: to what extent is it reasonable to infer hatred or hostility based upon the degree of cruelty or suffering inflicted on the victim? (See paragraph 2.19 onwards)

3.96 But we also have to recognise and acknowledge the similarities between disability-based hate crime and aged based hate crime – in terms of how it manifests - whilst simultaneously understanding that perpetrator motivation can be focused on a single characteristic or multiple characteristics. Age blindness does not affect perpetrators, and yet nor are they immune to the constant negative ageist messages that permeate society.

³⁴⁸ <https://www.theguardian.com/commentisfree/2015/mar/06/guardian-view-generation-gap-youth-clubbed>

³⁴⁹ <https://www.independent.co.uk/news/uk/politics/brexit-why-did-old-people-vote-leave-young-voters-remain-eu-referendum-a7103996.html>

³⁵⁰ <https://www.smf.co.uk/publications/intergenerational-fairness-coronavirus/>

³⁵¹ Cited in: Garland, J. (2012) Difficulties in defining Hate Crime Victimisation, *Int. Journal of Victimology*, 18, (1), 25-37

³⁵² Penhale, B. (2010) Responding and intervening in Elder Abuse, *Ageing International*, 35, (3), 235-252

³⁵³ Cited in: Garland, J. (2012) Difficulties in defining Hate Crime Victimisation, *Int. Journal of Victimology*, 18, (1), 25-37

3.97 In this context we can see that age-related crimes include variations of ‘mate’ crime (including romance and marriage situations), significant types of financial crimes that mirror those identified within disability hate crime and sexual targeting, as well as crimes that are predominantly targeting older people (such as scams, inheritance and Wills exploitation). Additionally, there are crimes of extreme cruelty (including those perpetrated by people in positions of trust) that include deliberate hostile intent and targeting. The argument that such crimes have a ‘hate crime’ perspective if they are targeted at a ‘victim’ who has an overt disability, but not if the motivation is based on age, cannot be sustainable.

3.98 Consequently, there is evidence that older people

- a) can be reluctant to go out at certain times, as they may be/are too afraid to leave their homes after dark
- b) avoid certain areas in their communities
- c) withdraw from community centres and activities,
- d) (recently) isolate themselves through fear of being denied health support if they contract the virus.
- e) Resist utilising residential care services
- f) Withdraw from using technology

Difficulties in proving the aggravation

3.99 The difficulties in proving aggravation in relation to hate crimes against older people are similar to those experienced in relation to disability or sexual offences, but they are not insurmountable. The prejudice-based test would be applicable in many situations, increasing the potential for prosecution, in particular in relation to financial, sexual and cruelty-based crimes. The argument here being that the perpetrator had a negative prejudice toward older people that caused them to make assumptions about older people’s ability to resist, their lifestyle, their assets and so forth.

3.100 In part the challenges of proving aggravation are about the training and expertise of the police and/or prosecutors and their ability to understand the nature of the crime. For example, the University of Sussex reported the following from a contributor to their report: *“[T]here is a tendency that once a flag’s been put up, to stop looking wider. And part of the hate crime checks we do, we actually look at the crimes against older persons, because sometimes you’ll find other hate crime strands within that. So, is there a hidden disability offence? Is this based on dementia or some other aspect that you’ve actually got a disability crime linked in there? And we’ve had cases involving abuse of elderly patients in care homes where the investigation by the police hadn’t identified that aspect. We had. We then flagged that up as a hate crime case and got significant sentences as a result; but again, that*

*information was shared with the police and used in training exercises. But that shows the complexity.*³⁵⁴

- 3.101 Paul Greenwood, former Deputy District Attorney in San Diego, reinforces the need for education and training in order to increase the potential for successful prosecutions: *Educate police, whenever and however possible, to perform thorough investigations of all suspected elder abuse crimes; Establish a public awareness campaign that informs the community of the correct channels for reporting suspected cases of abuse; Use every opportunity to educate key personnel who deal with elders in need, such as Adult Protective Services (APS) caseworkers, emergency room nurses and doctors, paramedics, and fire officers in awareness, recognition, and response.*³⁵⁵ This increases the potential for the aggravation to be identified and recorded for use in court.
- 3.102 This prejudice-based test has an increased likelihood of successful prosecution if we consider this from an ageist rather than a vulnerability perspective, where vulnerability is seen as the means by which access is gained to the victim or their property.
- 3.103 Next to witness statements, there are a number of additional ways in which hate crimes can be proved in court, including securing audio and video recording of the incident, with multiple interviewee cohorts explaining that such recordings are helpful to secure a conviction. This may include CCTV, body-worn cameras, mobile phone footage, or use of recorded 999 calls.³⁵⁶
- 3.104 Consequently, in considering the examples in Appendix A, it is apparent that there are opportunities, in some cases with video evidence, to argue either hostility or prejudice to the following types of situations
- Humiliating and bullying
 - Placing a wet incontinence pad over a victim's mouth
 - Wrapping a blood-soaked bandage (from a pressure ulcer) around a victim's head (on camera)
 - In the current pandemic, coughing at and assaulting an older couple
 - Slapping, mocking, bullying and taunting an older woman (on camera)
 - Threatening to take a walking aid, calling an older man gay and threatening to put him in a frilly dress (on camera)
 - Calling an old man a "f**king old b**tard", witnessed.
 - Years of anti-social behaviour toward an older person
 - Verbally abusing and assaulting an old man in a public place

³⁵⁴ Walters, M, Wiedlitzka, S. and Qwusu-Bempah, A. (2017) *Hate Crime and the Legal Process: options for Law Reform*, Project report, Brighton: University of Sussex.

³⁵⁵ Greenwood, P. (2010) Our graying society: issues of elder abuse and age bias, *Prosecutor's Brief*, 2010-2, Vol. 31, #4/Vol. 32, #1

³⁵⁶ Walters, M, Wiedlitzka, S. and Owusu-Bempah, A. (2017) *Hate crime and the legal process: options for law reform*. Project Report. Brighton, University of Sussex

- 3.105 Relying on enhanced sentencing alone has proved ineffective to date: *We found it was very rare to see instructions to the court prosecutor to bring to the court’s attention the fact that the case involved a crime against an older person, and that this factor could be an aggravating feature when the court came to consider sentencing – for example, when the victim was targeted because they were perceived to be vulnerable because of their age.*³⁵⁷
- 3.106 Nor does it adequately recognise the hatred/hostility/prejudice aspect of the crime. *‘Sentencing guidelines do not carry the same symbolic weight as the criminal (or sentencing) laws; neither do the provisions set out in law sentencing maxima’.*³⁵⁸ It relegates such crimes to a ‘second class’ status, whereby adding race or disability (or another current recognised characteristic), immediately changes the perception of the crime and raises its status.
- 3.107 There is a contradiction in acknowledging age-related hate crime for the purposes of enhanced sentencing, but not doing so in terms of a recognised aggravated offence. The Government previously acknowledged this contradiction: *‘Although crimes such as this may fall outside of the nationally monitored strands, they are nonetheless hate crimes, and they should therefore be treated as such. We have been very clear with local areas that they are free to include other strands in addition to the monitored five when developing their approach to hate crime. For example, some areas have included age or gender in their response to hate crime, to reflect the concerns of local citizens or in response to trends in local crime’.*³⁵⁹

Potentially harmful consequences

Stereotyping based on vulnerability

- 3.108 It has been argued that introducing older age as a protected characteristic may itself be an ageist policy, as it is *based on the labelling of all older people as ‘vulnerable’ which is associated with broader depictions of older people as frail, weak and dependent.*³⁶⁰ Yet this is an argument that could be applied equally with regard to people with disabilities. Chakraborti and Garland acknowledge that there is resistance amongst certain targeted groups – most notably disabled people – to the term vulnerability, and its patronising overtones. Their response is to emphasise that the term *“encapsulates the way in which many hate crime perpetrators view their target: as weak, defenceless, powerless or with a limited capacity to resist”.*³⁶¹

³⁵⁷ HMICRFS (2019) *The Poor Relation. The police and CPS response to crimes against older people*. London: HMICRFS

³⁵⁸ Walters, M, Wiedlitzka, S. and Owusu-Bempah, A. (2017) *Hate crime and the legal process: options for law reform*. Project Report. Brighton: University of Sussex.

³⁵⁹ HM Govt. (2012) *Hate Crime Action Plan: Challenge it, Report it, Stop it: the Government’s plan to tackle hate crime*, Available from: www.gov.uk/government/publications/hate-crime-action-plan-challenge-it-report

³⁶⁰ Bows, H. (2019) *Prosecution of Elder Abuse*, Submission to Justice Committee, Scotland, Durham: University of Durham Law School

³⁶¹ Chakraborti, N. and Garland, J. (2012) Reconceptualizing hate crime victimization through the lens of vulnerability and ‘difference’ *Theoretical Criminology* 16, (4) 499, 514.

3.109 The Law Commission consultation paper notes this point, that many people included under the disability criteria of current Hate Crime legislation might not perceive themselves as such, and that the term ‘vulnerable’ is not one that many people with disabilities find acceptable. This is of course not an argument for excluding people with disabilities from protected characteristics, and nor should it preclude the inclusion of older age. While there are issues with the term ‘vulnerability’ that should not be ignored, it is not in itself an argument against perceiving some crimes against older people as hate crimes. In addition, social perspectives on situational or circumstantial vulnerability can help to mitigate against perceptions of all individuals (disabled/older etc.) as automatically vulnerable.³⁶²

Whether hate crime is an appropriate way to characterise the offending

3.110 The Law Commission consultation suggested that it is potentially too reductive to characterise elder abuse as crime which targets older people based on prejudice or hostility towards old age. However, as pointed out below, elder abuse is just one aspect of crimes against older people. Nor, however, can it be suggested that ALL elder abuse should be considered a hate crime, any more so than all disability or similar related crime. The appropriateness of applying a hate crime perspective should be based upon the nature of the crime and the perpetrator and the circumstances in which the crime has occurred.

3.111 The Law Commission note that, when they met with Action on Elder Abuse (AEA) in the context of England and Wales, they were told that hate crime laws could fail to capture the nuances surrounding elder abuse and its causes. They argued that elder abuse is rarely about hatred.

There are a number of issues with that position.

3.112 Firstly, not all crimes against older people can be defined as elder abuse. As constituted, AEA addresses abuses that are a consequence of a breach of an expectation of trust and clearly this would not encompass the full range of crimes that are perpetrated against older people.

3.113 Secondly, while elder abuse is complex and multi-faceted and may indeed have many nuances, these can include instances of hostility and prejudice. Such an argument should be inclusive not exclusive of hate crime motivations. (Appendix A demonstrates this, as do the various examples contained in this report). Even within interpersonal and intrafamilial relations there can be situations in which very real hatred or hostility is demonstrated and to that extent the statement by AEA may not be doing justice to the complexity of the issues.

3.114 And finally, AEA have already articulated (in Scotland) a contrary argument that, *‘while crimes against older people which are committed due to the victim’s perceived vulnerability comprise a much bigger problem than crimes motivated by hatred or*

³⁶² Penhale, B. and Parker, J. (2008) *Working with Vulnerable adults*, London: Routledge

prejudice due to the person's age, they were nevertheless aware that the latter type of crime can also be an issue for many older people. They often received calls to their Helpline regarding verbal abuse, harassment or general anti-social behaviour from younger people, with many older people telling the charity that they believe they were being targeted because of their age'.³⁶³

3.115 Among arguments in favour of including age/older age as a protected characteristic:

- (a) There is increasing evidence that older people are deliberately targeted by offenders;
- (b) When older people are targeted, this causes wider societal damage in that it increases fear of crime amongst the older population;
- (c) It is important as a society to communicate the message that targeting older people is unacceptable;
- (d) There is a perception amongst older people that crimes targeting their age group are not currently being treated sufficiently seriously by authorities and are not being sentenced appropriately.³⁶⁴
- (e) It would take into account the impact of these crimes: Crimes against older people often have a significant detrimental impact. For example, even a so-called 'minor' crime against an older person can act as a catalyst for a process of deterioration that can ultimately lead to the person's death. Soft sentencing can exacerbate that. It would highlight the pre-meditated nature of these crimes: Making elder abuse an aggravated offence would highlight that older people are being specifically targeted by criminals.³⁶⁵

3.116 The Probation Board for Northern Ireland supported the inclusion of age for the following reasons:

- There is increasing evidence that older people are deliberately targeted by offenders
- When older people are targeted, this causes wider societal damage and that increases fear of crime amongst the older population
- It is important as a society to communicate the message that targeting older people is unacceptable; and
- There is a perception among older people that crimes targeting their age group are not currently being treated sufficiently seriously by authorities and not being sentenced appropriately.³⁶⁶

3.117 The Commissioner for Older People in Northern Ireland observed in his submission to the Hate Crime consultation in the NI: *'Stated or implicit concerns that the*

³⁶³ Scottish Govt. (2018) *Independent Review of Hate Crime Legislation in Scotland: Final Report*, Edinburgh: Scottish Government.

³⁶⁴ Northern Ireland Executive (2020) *Hate Crime Legislation in Northern Ireland. An Independent Review: Consultation Paper*, Belfast: NI Executive

³⁶⁵ Action on Elder Abuse (2017) *Elder Abuse is a crime, let's make it one*, London: Action on Elder Abuse,

³⁶⁶ Cited in H Northern Ireland Executive (2020) *Hate Crime Legislation in Northern Ireland. An Independent Review: Consultation Paper*, Belfast: NI Executive

*inclusion of older people (or age) as a category and legislative developments would render prospective measures too broad are wholly misplaced. Likewise, suggestions that, as we will (nearly) all become older people, the inclusion of such a category would be inconsistent with currently protected characteristics of race, religion, sexual orientation and disability. Such propositions are based on a mistaken assumption that the currently protected characteristics are comparable in terms other than membership of a group requiring protection. Membership of these groups is not necessarily similar: membership of a racial group being from birth, while an individual can experience a disability either from birth or later in life. The motivation, form and language of hatred directed towards a racial group and say, hatred directed towards a person or persons with a disability, are not necessarily analogous. In sum, hate crime legislation is intended to demarcate offences which are especially socially divisive, in that they target members of vulnerable groups in society because they are or are assumed to be part of such a group. The development of hate crime legislation should focus on whether and how extra protection is afforded to a particular group. It should not attempt to draw parallels between various groups in vain.*³⁶⁷

3.118 A principled case for including these characteristics within the ambit of hate crime legislation is not difficult to make – it could be done, for example, on the basis that women and older people are groups who experience (unjustified) marginalisation in society.³⁶⁸

3.119 The final report of the Independent Review of Hate Crime Legislation in Scotland acknowledged this in recommendation 10, *‘There should be a new statutory aggravation based on age hostility. Where an offence is committed, and it is proved that the offence was motivated by hostility based on age, or the offender demonstrates hostility towards the victim based on age during, or immediately before or after, the commission of the offence, it would be recorded as aggravated by age hostility. The court would be required to state that fact on conviction and take it into account when sentencing.’*³⁶⁹

FINAL CONCLUSION:

The Law Commission sought arguments and evidence that crimes against older people could be considered hate crimes. This document provides a substantial body of evidence demonstrating prevalence, types, circumstances and severity of crimes. Additionally, it challenges the arguments against such action, and demonstrates similarity between age and other types of hate crime, including multiple and intersecting disadvantages, sufficient to show justification for the inclusion of age as an aggravated offence.

³⁶⁷ Cited in Northern Ireland Executive (2020) *Hate Crime Legislation in Northern Ireland. An Independent Review: Consultation Paper*, Belfast: NI Executive

³⁶⁸ Chalmers, J. and Leverick, F. (2017) *A Comparative Analysis of Hate Crime Legislation: A Report to the Hate Crime Legislation Review*, Glasgow: University of Glasgow.

³⁶⁹ Scottish Govt. (2018) *Independent Review of Hate Crime Legislation in Scotland: Final Report*, Edinburgh: Scottish Govt.

CONSULTATION QUESTIONS:

Consultation Question 15.

21.27 We invite consultees' views on whether age should be recognised as a protected characteristic for the purposes of hate crime law.

Age should be recognised as a protected characteristic for the purposes of hate crime law.

Consultation Question 16.

21.28 We invite consultees' views as to whether any age-based hate crime protection should be limited to "older people" or include people of all ages.

While we believe that limiting any change in Hate Crime legislation to focus specifically on older people would be a very strong societal message, as noted by the Commissioner for Older People in Wales, we are not opposed to this including people of all ages.

We believe the issue in its simplest form is whether someone committed a criminal act against another person by reason of hostility or prejudice. This would require evidence of the act itself and evidence of motivation based on hostility or prejudice towards 'the victim's characteristic group', where age is a defined characteristic.

Consultation Question 23.

21.37 We invite consultees' views as to whether the current motivation test should be amended so that it asks whether the crime was motivated by "hostility or prejudice" towards the protected characteristic.

Yes.

Consultation Question 24.

21.38 We provisionally propose that the model of aggravated offences with higher maximum penalties be retained as part of future hate crime laws. 21.39 Do consultees agree?

Yes.

Consultation Question 25.

21.40 We provisionally propose that the characteristics protected by aggravated offences should be extended to include: sexual orientation; transgender, non-binary and intersex identity; disability, and any other characteristics that are added to hate crime laws (in addition to the current characteristics of race and religion). 21.41 Do consultees agree?

Yes.

Consultation Question 26.

21.42 We provisionally propose that the decision as to whether an aggravated version of an offence should be created be guided by: the overall numbers and relative prevalence of hate crime offending as a proportion of an offence; the need to ensure consistency across the criminal law; the adequacy of the existing maximum penalty for the base offence; and whether the offence is of a type where the imposition of additional elements of the offence requiring proof before a jury may prove particularly burdensome. 21.43 Do consultees agree?

We have some concerns as to whether aspects of this model of selection is counterproductive in relation to identifying and understanding the nature of hate crime.

For example, if hate crime against people with disabilities was being evaluated now using the criteria of *'overall numbers and relative prevalence'* of offending, it is possible that these crimes would not be considered sufficient to meet the threshold, because reporting, investigation and prosecution numbers are comparatively low. This is also potentially true with regard to older people, if the limited evidence used in the Law Commission consultation document was to be applied (hence the additional data that we have provided). Fundamentally, this approach assumes that the quality of the data available is sufficiently robust to reflect the reality of hate crime against a community or group, and the evidence is that this is not the case.

We have no concerns in relation to the need to ensure consistency across the criminal law; and the adequacy of the existing maximum penalty for the base offence.

We do however have some concerns about the question as to *'whether the offence is of a type where the imposition of additional elements of the offence requiring proof before a jury may prove particularly burdensome.'* This is because there are many stages leading up to prosecution that influence whether this becomes a burdensome activity and, as we have highlighted in relation to older people, some of this is about the training of investigators and prosecutors, the use of special measures, and the support of witnesses throughout the process. For the final delivery of the case in court not to be burdensome, the lead-up actions need to have been effectively undertaken. We do not consider that this would necessarily be the case if applied in relation to age (appropriate training, measures etc. not guaranteed at present viz. execution of lead-up actions)

Consultation Question 30.

21.51 We invite consultees' views on whether any property or fraud offences should be included within the specified aggravated offences.

We believe that property and fraud offences should be included within the specified aggravated offences.

Consultation Question 32.

21.54 We invite consultees' views on whether a provision requiring satisfaction of the legal test in respect of "one or more" protected characteristics would be a workable and fair approach to facilitate recognition of intersectionality in the context of aggravated offences.

We believe that this would be workable and a fair approach to facilitate recognition of intersectionality in the context of aggravated offences.

Consultation Question 34.

21.56 We invite consultees' views on whether where only an aggravated offence is prosecuted, the Courts should always be empowered to find a defendant guilty of the base offence in the alternative.

We believe that, in such circumstances, the Courts should always be empowered to find a defendant guilty of the base offence in the alternative.

Consultation Question 36.

21.58 We provisionally propose that the enhanced sentencing model remain a component of hate crime laws, as a complement to an expanded role for aggravated offences. 21.59 Do consultees agree?

Yes.

Consultation Question 37.

21.60 We provisionally propose that sentencers should continue to be required to state the aggravation of the sentence in open court. 21.61 Do consultees agree?

Yes.

Consultation Question 62.

21.105 We invite consultees' views on whether they would support the introduction of a Hate Crime Commissioner.

Yes, provided this covered all hate crimes (i.e. potential prosecution of all hate crimes concerning protected characteristics treated as of equal merit/severity)

Appendix A

Grieving elderly people in Sheffield targeted in 'mate crime' spree: Maxine Stavrianakos, head of neighbourhood intervention and tenant support, said perpetrators were targeting people who recently lost someone close by checking obituary notices and then befriending them. It is also known as 'mate crime' and can include anything from taking or borrowing money to consuming food and drink. It is based on the assumption the victim will not report them as they are their 'mate'.³⁷⁰

Bullying care worker who taunted elderly dementia patients jailed and banned for life: Teddy Baker humiliated the helpless and elderly residents by pushing them around, handling them roughly, and putting a urine soaked incontinence pad over the mouth of one of them.³⁷¹

Teenagers held for allegedly coughing at and assaulting elderly couple: Police said the couple were approached by three males before one coughed in their faces in Paynes Park in Hitchin shortly before 1pm on Friday. One of the alleged victims, a woman in her 70s, sustained a black eye and was taken to hospital for a checkup before being released, according to a spokesman for Hertfordshire constabulary.³⁷²

Two elderly women sexually assaulted at Manchester care home by man who entered premises: Police say a man had entered the home at about 3.20am and sexually assaulted two residents. It is unclear how he got into the property.³⁷³

Elderly care home abuse: Shocking footage shows elderly residents being taunted and assaulted at Essex care home: She filmed a woman with dementia who was partially paralysed being slapped by a care worker who had previously been the recipient of complaints. Other care workers were also caught on camera repeatedly mocking, taunting, and bullying the same patient.³⁷⁴

Bullying care home worker taunts elderly dementia patient: The footage shows the woman asking the vulnerable and confused man if he had gay tendencies, threatening to take his walking stick and put him in a frilly dress. She also urges him to sing a song containing the lyrics 'I hate people/People are despicable creatures' because **Jeremy Corbyn** 'says you've got to'. And she then asks him about 'that woman who was in your bed' whom he could have 'impregnated'.³⁷⁵

³⁷⁰ <https://www.thestar.co.uk/news/people/grieving-elderly-people-sheffield-targeted-mate-crime-spre-1741510>

³⁷¹ <https://www.devonlive.com/news/devon-news/bullying-care-worker-who-taunted-3665253>

³⁷² <https://www.theguardian.com/uk-news/2020/mar/23/three-teenagers-held-for-allegedly-coughing-at-elderly-couple-hertfordshire>

³⁷³ <https://news.sky.com/story/two-elderly-woman-sexually-assaulted-at-manchester-care-home-by-man-who-entered-premises-12043154>

³⁷⁴ <https://www.independent.co.uk/news/uk/home-news/shocking-footage-shows-elderly-residents-being-taunted-and-abused-essex-care-home-9303888.html>

³⁷⁵ <https://www.dailymail.co.uk/news/article-6618615/Care-home-worker-mocks-elderly-dementia-sufferer.html>

OAP abused in Innerleithen pavement cycling row: Sarah Keddie contacted us this week to say she was astounded by the total lack of respect when the cyclist, not thought to be local, called the elderly man a “f**king old b**tard”. Despite signage being erected asking cyclists not to cycle on pavements, Mrs Keddie said people weren’t adhering to the rules.³⁷⁶

Lancashire OAP snaps after years of torment: Bob Harrison, 74, of Gardner Road, Morecambe, reached the end of his tether after years of abuse by thugs who he says threw stones at his windows, put a firework through the letter box, threw eggs at doors, threw oil at his door and car, and verbally abused him.³⁷⁷

Chesterfield carer jailed for assault on OAP: A NURSING home assistant is behind bars after a court heard how she tightened a skirt around an 80-year-old resident’s throat and threatened her. And a jail sentence hangs over a colleague who put her hand over the dementia victim’s mouth to keep her quiet during the incident. “Jenny Glossop held the waistband tightly against her throat and said: ‘Hit me again and it’ll be the last thing you do’. Martinique Bannon then came and put her hand over the complainant’s mouth as if to silence her.”³⁷⁸

'They were like a bunch of animals' - Disabled OAP's outrage after he is verbally abused over street parking: A North Staffordshire pensioner says he was verbally abused by a group of young men after he asked them why their cars were blocking the pavement. Anthony Garner, who lives in Bilton Steet, Stoke, says he asked the motorists why they didn't use a nearby car park - which was empty - but was met with 'a torrent of foul mouthed abuse'.³⁷⁹

OAP punched in face by car passenger as he crossed road: An elderly man was punched in the face during a "random and unprovoked attack" by a car passenger in Edinburgh. The 73-year-old was assaulted and verbally abused during the incident on Queen Street on Thursday. Police said the victim was walking along the road when a vehicle drew up alongside him around 10.45am. A man who was a passenger in the vehicle then subjected him to verbal abuse. As the pensioner crossed the road, the passenger left the vehicle and punched him in the face, leaving him with a serious injury which needed hospital treatment.³⁸⁰

Twisted care worker struck off for psychological abuse at Glasgow care home: A Twisted care worker who told a vulnerable OAP 'You remind me of my mother and I f***** hate my mother' has been struck off. Daniel Akers subjected the elderly woman to a pattern of psychological abuse 'for his own gratification', an inquiry was told. The abuse included repeatedly asking her where the toilet was knowing she did not have the capacity to answer, lying to the elderly woman, more than once, that he was on the phone to someone

³⁷⁶ <https://www.bordertelegraph.com/news/17916715.oap-abused-innerleithen-pavement-cycling-row/>

³⁷⁷ <https://www.lep.co.uk/news/lancashire-oap-snaps-after-years-torment-674279>

³⁷⁸ <https://careappointments.com/care-news/england/84838/chesterfield-carer-jailed-for-assault-on-oap/>

³⁷⁹ <https://www.stokesentinel.co.uk/news/stoke-on-trent-news/they-were-like-bunch-animals-3922233>

³⁸⁰ <https://archive.news.stv.tv/east-central/1394521-pensioner-punched-in-face-by-stranger-as-he-crossed-road.html>

she knew and making a complaint about her, which left her distressed, and telling her to wear her jacket indoors "in an attempt to humiliate her."³⁸¹

OAP volunteer suffers facial injuries in reservoir attack by gang of yobs: A pensioner was left with facial injuries after being attacked by a gang of yobs at a Scots beauty spot. The 70-year-old was left covered in blood after trying to issue safety advice to four teens who then assaulted him at Harlaw Reservoir's dam. His offered safety advice to a group of four youths and his good intention was returned with verbal abuse from one of the youths who held his arms whilst another delivered several blows to his face.³⁸²

³⁸¹ <https://www.glasgowtimes.co.uk/news/17922012.twisted-care-worker-struck-off-psychological-abuse-glasgow-care-home/>

³⁸² <https://www.dailyrecord.co.uk/news/scottish-news/oap-volunteer-suffers-facial-injuries-22453025>

Appendix B

A teenage nursing home worker has been jailed for three years for raping an 86-year-old woman. Kitchen assistant Maxwell Laycock, then 17, was delivering a Christmas Day cup of tea when he attacked her in her care home room. He also admitted sexually assaulting a 16-year-old girl, who was working as a kitchen assistant at the nursing home in Ilkley.

Man who sexually assaulted 88 year old woman in sheltered home jailed for life. The depraved attack took place less than five years after a previous assault on a 51 year old. The ordeal for the 88 year old was recorded on tape after she pulled an emergency cord to raise the alarm.

A teenager, who indecently assaulted and tried to rape an 87-year-old woman suffering from Alzheimer's disease, was sentenced to eight years in a young offenders' institution and ordered to be entered on the sex offenders' register. The attack took place shortly after midnight in the nursing home where the woman lived. The court heard that the woman was bed-ridden, unable to move independently and could not communicate through speech.

A nurse who took disgusting pictures of two elderly women at a care home and handed them out to other members of staff has been struck off the nursing register. The man photographed one blind resident as she lay naked on the floor of her room, a second woman was snapped inching her way along a corridor on her bottom.

A nurse who molested 10 helpless women patients when they were too ill to complain was struck off yesterday. Many of the women were in their eighties and were unable to defend themselves or report the attacks because of their various ailments. A jury convicted the nurse of 10 charges of indecent assault and he was jailed for three years.

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