

Identifying and Acting on Elder Abuse

A Toolkit for Legal
Practitioners

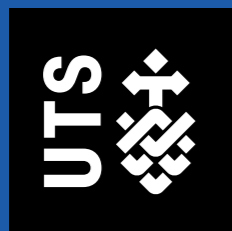


Table of Contents

1. Background	6
What is Elder Abuse?	6
2. Talking to Clients about Elder Abuse	7
When to Raise the Topic	7
Using an Elder Abuse Screening Tool	10
Capacity Issues	14
3. Assisting Clients at Risk for or Experiencing Abuse	15
Provide Information about Options, Taking Account of Risk Severity	15
Confidentiality Duties	16
Encourage and Assist the Older Person to Make their Own Decisions	17
Give and Respect the Choice to Accept or Refuse Services	18
Consider Diversity	19
4. Conclusion	20
References	21

About this Toolkit

This Toolkit was developed as part of a 2017/18 pilot project on elder abuse funded by the New South Wales Department of Family & Community Services. An aim of the project was to examine the usefulness of a brief elder abuse screening process to assist lawyers in identifying and assisting clients at risk for or experiencing various forms of elder abuse.

This Toolkit covers the following key topics:

- background information on elder abuse
- talking to clients about elder abuse – this section of the Toolkit includes short questionnaires/screening tools to aid conversations with clients
- assisting clients at risk for or experiencing abuse, with a focus on principles to guide responses

The Toolkit includes links to many useful resources. It is recommended that the Toolkit be used in electronic format for easy access to these online materials.

The content of this Toolkit is informed by current research on elder abuse and practitioner feedback. We are grateful to the lawyers who provided feedback on this resource, including the practitioners who participated in the pilot project, members of our project advisory committee, and other practitioners with expertise in elder law.

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This Toolkit will be periodically updated and expanded to incorporate new research evidence and resources to assist legal practitioners in identifying and responding to elder abuse.

Suggestions and comments are welcome and may be directed to Associate Professor Nola Ries, Law | Health | Justice Research Centre, Faculty of Law, University of Technology Sydney, nola.ries@uts.edu.au.

1. Background

What is Elder Abuse?

Elder abuse – also referred to as the mistreatment of older people – is “a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person.”

World Health Organization, Elder Abuse – Fact Sheet (June 2018)

Elder abuse includes **physical, psychological and sexual harms, neglect and financial exploitation**. Abusive behaviours violate the dignity and respect of older people. In Australia, psychological and financial abuse are estimated to be the most prevalent forms of abuse, followed by physical abuse, neglect and sexual abuse. Family members are often the trusted individuals who engage in abusive behaviours and elder abuse has been described as “the last form of family violence to come to public attention.”¹ Under-detection of elder abuse is a serious problem.²

For more information

- The NSW Government’s [Interagency Policy on Preventing and Responding to Abuse of Older People](#) provides further information on each form of elder abuse. This Policy adopts the WHO definition of elder abuse.
- [The NSW Elder Abuse Toolkit](#), produced by the NSW Elder Abuse Helpline & Resource Unit, summarises [behaviours and signs](#) of each abuse type.

To note

- As part of its 2018 National Plan to address elder abuse, the Commonwealth Attorney-General committed to funding a national elder abuse prevalence study.
- The [Australian Institute of Family Studies](#) is leading work to develop a nationally accepted definition of elder abuse for use in Australia.
- Scams that target older people are also a concern, such as door-to-door or telephone scammers and online romance, lottery or investment scams. These activities fall outside the WHO definition of elder abuse if the perpetrator is not in a relationship of trust with the older person. For more information on scams targeting older people, visit the Australian Competition & Consumer Commission’s [Scamwatch website](#).

2. Talking to Clients about Elder Abuse

Elder abuse is “everybody’s responsibility – a responsibility not only to recognise elder abuse, but most importantly, to respond to it effectively.”

Australian Law Reform Commission, *Elder Abuse – A National Legal Response* (ALRC Report 131, May 2017). Executive Summary, p 29

Professionals and service providers who interact with older people in community settings can play an important role in talking to clients about elder abuse. This includes legal and health practitioners, home care workers, financial institution employees – and even hairdressers and taxi drivers.³

Conversations about elder abuse are important for several reasons:

- to identify clients who are at risk for or experiencing abuse
- to advise, support and empower clients at risk or experiencing abuse
- to raise community awareness of elder abuse
- to reduce stigma surrounding elder abuse

When to Raise the Topic

When working with older clients, lawyers have several opportunities to raise the topic of elder abuse. Questionnaires and screening tools can help guide conversations.

As a general wellbeing check-up

Elder abuse may seem like a confronting topic to discuss in routine practice with older clients. Yet it can be introduced in a supportive and educative way, with a focus on client wellbeing and improving awareness.

The Elder Abuse Helpline & Resource Unit provides a checklist to help assess an older person’s financial, social, medical and psychological wellbeing. The checklist is worded as a self-assessment tool but can be re-phrased for use in conversation with the client.

MY WELLBEING CHECKLIST - A CHECKLIST FOR OLDER AUSTRALIANS

1. I know how much money I have in my bank account.
2. I have the freedom to spend my money.
3. I have regular contact with my family and friends.
4. I attend social activities.
5. I receive medical attention when I need it, and have a say about my healthcare plan and treatment.
6. My personal care needs (eg, showering; personal hygiene, etc) are taken care of.
7. I am treated respectfully by my family and friends.
8. I feel safe at home.

To request copies of this Checklist, contact the Elder Abuse Helpline & Resource Unit on 1800 628 221 or email eahru@chcs.com.au. Note: This checklist has not been evaluated in research studies and responses do not necessarily indicate the presence or absence of abuse.

Responses that indicate possible concerns warrant further discussion with the client, as covered in Part 3 of this Toolkit. For clients who report no wellbeing concerns, a lawyer may wish to provide general information about elder abuse, such as brochures available from the Elder Abuse Helpline & Resource Unit. This information empowers clients to be aware of signs of elder abuse among their friends and family members.

For clients in higher risk situations

The client's personal circumstances and the legal help they are seeking may indicate they are at higher risk of experiencing abuse. The following questions may help to flag higher risk situations where elder abuse screening is prudent.

- **What legal service is being sought?** Is the older client seeing you for assistance with advance planning, such as making a will or enduring appointments? Is the client seeking help with a financial or property transaction, such as transferring or mortgaging property or making a loan, involving a family member or other person in a relationship of trust?
- **Who initiated contact with your office?** Did the older person contact you? Did someone else arrange the appointment, such as an adult child? Is this other person engaging in controlling behaviour, such as wanting to speak for the older person or objecting to you speaking privately with the older person?
- **What are the client's personal circumstances?** Does the client intake process reveal personal circumstances that suggest a heightened vulnerability to abuse? For example, has the client disclosed a diagnosis of dementia or other condition that affects cognition? Are you aware of a prior history of conflict or dysfunction in the older client's family? The NSW Elder Abuse Helpline & Resource Unit has more information on [risk factors for elder abuse](#).

For clients who disclose abuse

A client may disclose a situation that constitutes abuse, however they may not label it as such. For example, the client may disclose that an adult child has pressured them for money or other financial support against the client's wishes. Screening questions are helpful in such situations to identify other forms of abuse the client may be experiencing.

NSW Law Society Best Practice Guide

The NSW Law Society provides a Best practice guide for practitioners in relation to elder abuse, available in its [Elder Law Resources](#). This three-page document covers meeting set-up, meeting procedures and documentation.

Using an Elder Abuse Screening Tool

Screening tools can help professionals talk to their clients about elder abuse. Well-designed screening tools have **several benefits**:

- Provide a standard set of questions that cover all forms of elder abuse
- Are valid (measure what they claim to do), reliable (consistently measure what they claim across different people and settings) and accurate (effective at identifying when problems exist and do not under- or over-detect)
- Are quick to use
- Are acceptable to professionals and clients
- Enable efficient and consistent documentation

Several screening tools have been developed for use by community-based service providers. While they have been designed and tested mostly in healthcare settings, they can be adapted for use by lawyers.⁴

The National Ageing Research Institute has led the development of a draft Australian Elder Abuse Screening Instrument (AUSI). This questionnaire is designed as a three-step process. As a first step, the older person is asked whether they receive help with activities such as managing their money, taking part in social activities, shopping and personal care. If they receive help, they are asked whether they feel they are treated respectfully by anyone who provides assistance. If yes, the questionnaire may be concluded. If the person reports concerns with how they are treated, the next step asks questions to identify the type and frequency of potentially abusive behaviour the older person may be experiencing. The third step asks about forms of abuse that constitute more serious breaches of the older person's rights, such as physical violence or non-consensual sexual conduct. The AUSI has been pilot tested and further study will evaluate its use in various settings.

The Elder Abuse Suspicion Index[®] (EASI) is another example of a brief screening questionnaire and is supported by research.⁵ It covers all types of abuse, and is effective in ruling out abuse where it is not occurring. The first five questions are answered by the client and the final question is answered by the practitioner.

ELDER ABUSE SUSPICION INDEX[®]

In the last 12 months:

1. Have you relied on people for any of the following: bathing, dressing, shopping, banking or meals?
2. Has anyone prevented you from getting food, clothes, medication, glasses, hearing aids or medical care, or from being with people you wanted to be with?
3. Have you been upset because someone talked to you in a way that made you feel shamed or threatened?
4. Has anyone tried to force you to sign papers or to use your money against your will?
5. Has anyone made you afraid, touched you in ways that you did not want, or hurt you physically?
6. [For assessment by the practitioner]: Elder abuse may be associated with findings such as: poor eye contact, withdrawn nature, malnourishment, hygiene issues, cuts, bruises, inappropriate clothing, or medication compliance issues. Did you notice any of these today or in the last 12 months?

The EASI[®] is available in [checklist format](#) from the Elder Abuse Helpline & Resource Unit.

Original source: MJ Yaffe, C Wolfson, M Lithwick and D Weiss, 'Development and Validation of a Tool to Improve Physician Identification of Elder Abuse: The Elder Abuse Suspicion Index (EASI)[®]' (2008) 20(3) *Journal of Elder Abuse and Neglect* 276. For details about the strengths and limitations of the tool, as well as access to ten linguistic versions of the tool visit: www.mcgill.ca/familymed/research/projects/elder.

'Yes' responses to any of the questions indicate a need for further discussion by asking open-ended **who, when, how often, and what questions**: What happened? Who was involved? When did this happen? What did you do when this happened? What do you wish to do now? For example, Question 1 asks about reliance on others for daily living activities, which is a risk factor for abuse. If the client says they rely on others, follow up questions could ask: Who helps you? Does this person treat you with respect? Do you have any concerns with how this person helps you?

- The Elder Abuse Helpline & Resource Unit provides an [information sheet on effective questioning techniques](#), including guidance on using open-ended and direct questions.

Financial Abuse and Exploitation

Lawyers are well-placed to prevent and respond to financial abuse, especially when advising clients on enduring powers of attorney, wills and related legal instruments. Screening questionnaires are available to help identify situations involving risk of financial abuse or exploitation. Examples include the **Older Adult Financial Exploitation Measure (OAFEM)**⁶ and the **Lichtenberg Financial Decision Screening Scale (LFDSS)**,⁷ both developed by American researchers.

Financial exploitation

A comprehensive version of the OAFEM has 25 yes/no questions and covers six areas of financial exploitation, including abuse of trust, coercion and theft. A sub-set of questions may be used as a brief screen⁸ to check for indicators of abuse such as:

- someone borrowing money from the older client without repayment
- someone acting as if they are entitled to the client's money or other assets
- someone using the client's money for their own benefit instead of the client's
- the client's money or belongings disappearing without explanation
- someone lying about how they used the client's money
- someone demanding money from the client

If the client has had one or more of these experiences, further discussion about financial abuse is warranted.

Financial decision-making

The LFDSS may be used by lawyers, financial advisors and other service providers. To use the screening tool, the older client is asked to identify the financial decision or transaction they are considering or have made, such as making an enduring power of attorney, gifting or loaning money, or selling a major asset. The tool then provides 10 questions that cover points such as:

- whether the decision was their idea or suggested by another person
- the purpose for the decision or transaction
- how it will affect them and others
- who will benefit most
- whether the decision changes previous wishes (eg, about their will)
- how much risk is involved

The tool and other resources are available for professionals who [register for access](#).

Capacity Issues

Lawyers have an ethical responsibility to act only on “lawful, proper and competent instructions,”⁹ which requires the lawyer to ensure that an older client has capacity to give instructions.

- For comprehensive guidance, see [Law Society of New South Wales, A Practical Guide for Solicitors: When a Client's Mental Capacity is in Doubt](#).
- **Appendix B in the Law Society Guide provides a helpful capacity worksheet for lawyers.** It lists indicators of potentially impaired capacity and recommended actions depending on the level of evidence of diminished capacity (ranging from no or very minimal evidence of diminished capacity to evidence that the client lacks capacity to instruct on the matter).
- **Pro forma letters** are available on the [Law Society website](#) if you wish to request the opinion of a medical practitioner on a client's capacity to make an enduring power of attorney or a will.
- The [Capacity Toolkit](#) prepared by the NSW Department of Justice is a comprehensive resource on capacity in key areas of decision-making – personal life, health, money and property – and capacity assessment principles and practices. A plain language [capacity fact sheet](#) is available for people whose decision-making ability may be in question.

Elder abuse and capacity

Lawyers should be aware of a vicious circle in relation to abuse and capacity: clients with conditions that affect their cognition are at greater risk of abuse and experiencing abuse can negatively affect an older person's cognitive abilities.¹⁰ Lawyers need to consider elder abuse and impaired capacity as potentially intertwined issues. The voluntariness of a client's instructions may be compromised as a result of undue influence and coercion exerted by others, which can be psychological or emotional abuse. Providing the client with information and supports to address elder abuse can help to enhance their capacity to make choices on other matters. Strategies to support decision-making are discussed further in Part 3 of this Toolkit.

3. Assisting Clients at Risk for or Experiencing Abuse

In situations where an older adult may be experiencing abuse, the specific advice and supports offered will vary depending on the issues revealed and the practitioner's scope of practice and expertise. The coordinated involvement of legal, health and community service providers is generally considered the “gold standard for [addressing elder abuse], as no single discipline or sector alone has the resources or expertise needed to address the issue.”¹¹ Referrals to other agencies and practitioners may be important options to consider with the client.

The following statement from the Australian Law Reform Commission provides an important starting point in considering responses to risk situations.

“Older people, like most adults, prize their freedom and independence, and do not wish to be treated like children or sheltered from all risk. The autonomy of older people should not be afforded less respect than the autonomy of others. However, in limited cases, where there is particularly serious abuse of vulnerable people, protection should be given additional weight.”

Australian Law Reform Commission, *Elder Abuse – A National Legal Response* (ALRC Report 131, May 2017). Executive Summary, p 21

Provide Information about Options, Taking Account of Risk Severity

Older people should be informed about their options and the services that can support and empower them.

Assess whether there is an immediate risk to the client's health and safety, such as physical violence or denial of vital medication. Offer to assist the client in contacting the Elder Abuse Helpline & Resource Unit, police, their doctor, emergency health services, or other supports, as appropriate. Confidentiality considerations are noted below.

Consider whether treatment the older client has already experienced may constitute a crime, such as physical assault, verbal assault by threats, fraud, neglect, stalking, intimidation and harassment. Discuss remedies that may be available, as well as measures to protect against future abuse.

- The Elder Abuse Helpline & Resource Unit identifies **financial, health, welfare and legal agencies** that may be information and referral sources for older people at risk or experiencing various types of elder abuse. See [Tools 5.2 to 5.5](#) in the EAHRU online toolkit.
- **Elder mediation services** may help to resolve disputes between older people, family members and significant others. A growing number of organisations provide specialist mediation and family counselling services targeted to the needs of older people.

Confidentiality Duties

Lawyers may be concerned that their confidentiality duties preclude contact with services to assist in situations of elder abuse. The [Solicitors Conduct Rules](#) permit a lawyer to disclose confidential client information in several circumstances: see Rule 9.2.

- **A client may expressly or impliedly consent to the disclosure:** Rule 9.2.1. Seeking and documenting express client consent to contact elder abuse services is consistent with the NSW Government Interagency Policy on Identifying and Responding to Abuse of Older People, which emphasises the right of older adults to make their own choices.
- **A lawyer may share the client information in confidence in order to seek advice on their legal or ethical duties:** Rule 9.2.3. For example, the lawyer may wish to consult an Ethics Solicitor with the [Law Society Ethics Unit](#).
- **A lawyer may disclose client information to prevent the “probable commission of a serious criminal offence”** (Rule 9.2.4) or **“imminent serious physical harm to the client”** (Rule 9.2.5). The Glossary of Terms in the Solicitors Rules defines “serious criminal offence”, which includes “an indictable offence against a law of the Commonwealth or any jurisdiction (whether or not the offence is or may be dealt with summarily).” For example, common assault, including threats to harm where no physical contact is made, assault occasioning actual bodily harm, including bruises, scratches and psychological trauma, sexual and indecent assaults, and most frauds, including obtaining property or a financial advantage by deceptive or dishonest means, are indictable offences.
- Client information may be disclosed where compelled by law: Rule 9.2.2. In Australia, lawyers and other community-based professionals do not have a mandatory legal obligation to report cases of suspected elder abuse to authorities.

Encourage and Assist the Older Person to Make their Own Decisions

Practitioners can use counselling and supported decision-making strategies to enhance the client’s engagement in decision-making processes, including older clients who have conditions that affect their cognition. According to the United Nations, **supported decision-making** refers to “the process whereby a person with a disability is enabled to make and communicate decisions with respect to personal or legal matters.”¹²

- The [NSW Law Society Guide, When a Client’s Mental Capacity is in Doubt](#), provides a **stepwise approach** to identifying the client’s most important goals and tailoring advice accordingly, see [page 22](#).
- The [NSW Department of Justice Capacity Toolkit](#) provides guidance on [assisting decision-making](#).
- [Appendix C in the Law Society Guide on mental capacity](#) provides **practical techniques** to build trust with an older client and to accommodate impairments in vision, hearing and cognition.
- The American Bar Association’s Commission on Law & Aging provides the [PRACTICAL tool](#) for supported decision-making. The PRACTICAL acronym refers to nine steps lawyers can use to identify and implement strategies that support decision-making abilities.
- Resources on [supported decision-making for people with dementia](#) are available through the Cognitive Decline Partnership Centre.

To note

- The NSW Law Reform Commission’s 2018 [Final Report on the Review of the Guardianship Act 1987](#) recommended a new *Assisted Decision-Making Act*. Among other important changes, the proposed law would recognise supported decision-making and enable people to legally appoint a supporter.

Give and Respect the Choice to Accept or Refuse Services

It is not uncommon for older adults to refuse some or all options or services.¹³ However, a 2016 Victorian report on elder abuse interventions found that older people who received help to deal with abusive situations urge service providers to provide earlier referrals and supports when abuse or risk factors are identified.¹⁴ An older client who takes the step to see a lawyer may be in a help-seeking mode and wishing to take action to protect their rights and interests.

If a client chooses not to pursue legal actions or remedies, practitioners nonetheless have an important role in educating clients about options and community supports the client may access in the future should they wish to do so. The Elder Abuse Helpline & Resource Unit provides pocket guides with plain language guidance for older people. To request copies to share with your clients, contact the EAHRU on 1800 628 221 or email eahru@chcs.com.au

Responses to elder abuse must “recognise the right of the older person to decide not to pursue legal remedies and accommodate those wishes. Any interventions that unnecessarily impose on an older person’s right to autonomy and self-determination and fail to afford them the ‘dignity of risk’ may create adverse consequences.”

Justice Connect, Submission No. 182 to Australian Law Reform Commission, *Protecting the Rights of Older Australians from Abuse*, September 2016.

Consider Diversity

Consider the needs of the older person in relation to Aboriginality, culture, disability, language, religion, gender and sexuality.

Culturally and linguistically diverse clients

The NSW Elder Abuse Helpline & Resource Unit provides:

- guidance in its [Elder Abuse Toolkit](#) on working with people from culturally and linguistically diverse backgrounds: see pages 79–81
- [brochures](#) in languages other than English, including Italian, Croatian, Greek and Chinese (traditional and simplified)
- a [checklist](#) for effective communication with older people from culturally and linguistically diverse backgrounds

Telephone **interpreter services** can be arranged for a modest fee through the [Translating and Interpreting Service](#) (TIS). Interpreter services can be booked online in advance of your appointment with a client who is more comfortable with a language other than English. Immediate interpreter services are also available by ringing TIS on **131 450**.

Aboriginal clients

The NSW Elder Abuse Helpline & Resource Unit provides:

- guidance in its [Elder Abuse Toolkit](#) on working with Aboriginal and Torres Strait Islander people: see pages 81–82
- recommendations for effective communication with [Aboriginal and Torres Strait Islander people](#)

The NSW Trustee & Guardian publishes resources to assist Aboriginal people in making [culturally appropriate planning ahead documents](#), including:

- a [booklet](#) on making enduring appointments and wills
- an [Aboriginal wills handbook](#)

LGBTI+ clients

The Elder Abuse Helpline & Resource Unit provides guidance in its [Elder Abuse Toolkit](#) on working with Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) older people: see pages 82–84.

The Seniors Rights Service publishes the [Top Ten Legal issues](#) to consider for older LGBTI People, including advance planning documents and anti-discrimination rights.

A [factsheet](#) provides an overview of elder abuse and domestic violence issues for older LGBTI people, including referral resources.

4. Conclusion

Elder abuse response and prevention requires action across all sectors of society. The legal profession has a key role to play in meeting the needs of individual clients and also advocating for changes to laws, policies and practices to combat all forms of elder abuse.

As a starting point, legal practitioners need resources to assist them in identifying when older clients may be at risk for or experiencing abuse. Well-designed questionnaires and screening tools can help to initiate conversations and raise awareness about the behaviours that may constitute elder abuse.

Situations of abuse and exploitation, especially within family relationships, are often complex and require multi-faceted responses. Principles-based responses can ensure that older people are supported with information and services that promote dignity and respect and reduce harm.

More research and evidence-based resources are needed to inform elder abuse prevention and response. This Toolkit will be updated as new research and resources become available.

For information and updates, please contact Associate Professor Nola Ries, Law | Health | Justice Research Centre, Faculty of Law, University of Technology Sydney, nola.ries@uts.edu.au.

References

- ¹ Parliament of New South Wales, General Purpose Standing Committee No. 2. Elder Abuse in New South Wales. June 2016 <<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2387#tab-reports>>, quoting Prof S Kurrle, p 6, para 2.4.
- ² It is estimated that only around 1 in 24 situations of elder abuse are reported to police, elder abuse helplines or other specialist services: C Gallione et al, 'Screening Tools for Identification of Elder Abuse: A Systematic Review' (2017) 26(15-16) *Journal of Clinical Nursing* 2154.
- ³ Many submissions to the 2017 Australian Law Reform Commission Elder Abuse inquiry and the 2016 NSW Parliamentary inquiry into elder abuse called for elder abuse screening by community-based service providers. The Victorian government funds workshops for hairdressers on elder abuse detection and response and the NSW Police collaborate with the NSW Taxi Council on training for taxi drivers.
- ⁴ For further discussion, see NM Ries, 'Elder Abuse and Lawyers' Ethical Responsibilities: Incorporating Screening into Practice' (2018) 21(1) *Legal Ethics* 23.
- ⁵ A World Health Organization working group on elder abuse has validated the content of the EASI questions for older adults with intact cognition, based on studies in seven countries: WHO, *A Global Response to Elder Abuse and Neglect: Building Primary Health Care Capacity to Deal with the Problem World-Wide* (2006) <http://www.who.int/ageing/publications/ELDER_DocAugust08.pdf>.
- ⁶ KJ Conrad et al, 'Self-Report Measure of Financial Exploitation of Older Adults' (2010) 50(6) *Gerontologist* 758.
- ⁷ PA Lichtenberg, JA Teresi, K Ocepek-Welikson & JP Eimicke, 'Reliability and Validity of the Lichtenberg Financial Decision Screening Scale' (2017) 1(1) *Innovation in Aging* <<https://doi.org/10.1093/geroni/igx003>>.
- ⁸ A Phelan, G Fealy & C Downes, 'Piloting the Older Adult Financial Exploitation Measure in Adult Safeguarding Services' (2017) 70 *Archives of Gerontology and Geriatrics* 148. The full questionnaire is available in A Phelan, G Fealy, C Downes & N Donnelly, *The Older Adult Financial Exploitation Measure: A Pilot Study to Test its Appropriateness in an Irish Context*. National Centre for the Protection of Older People, University College Dublin, 2014 <<https://www.safeguardingireland.org/wp-content/uploads/2018/10/NCPPOP-Older-Adult-Financial-Exploitation-Measure-2014.pdf>>.
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- ¹⁴ National Ageing Research Institute and Senior's Rights Victoria. *The Older Person's Experience: Outcomes of Interventions into Elder Abuse* (2016) <<https://seniorsrights.org.au/wp-content/uploads/2016/06/SRV-NARI-Outcomes-Report-2016-FINAL-Web-6-June-2016.pdf>>.