



# Vulnerable Victims of Door-Step And Financial Crime – How to Maximise the Chances Of Effective Prosecution

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- Elderly and other vulnerable adults increasingly the victims of financial crime:
  - Targeted by doorstep sellers employing aggressive or misleading sales practices
  - Targeted by scammers – postal or telephone
  - Vulnerable to abuse by those charged with safeguarding their finances

- The ‘frontline of protection’: a mosaic of organisations and bodies charged with the protection of the vulnerable:
  - Police forces
  - Social Services
  - Trading Standards Services
- Purpose of this presentation to give you, as frontline services, an understanding of:
  - How the legal framework of offences fits the situations you encounter and
  - How to best preserve / present your evidence to result in effective prosecutions

- Which offences to charge / whether to charge
- Effective evidence gathering
- Enabling the witness to give their best evidence via the use of Special Measures
- The use of the Hearsay Provisions to adduce the evidence of witnesses who are unable to give evidence

# Offences – Whether to Charge

- Before considering which offences to charge, must consider the issue of whether to prosecute
- Guidance to the Care Act 2014:
- The core purpose of adult care and support is to help people to achieve the outcomes that matter to them in their life. Throughout this guidance document, the different chapters set out how a local authority should go about performing its care and support responsibilities. Underpinning all of these individual ‘care and support functions’ (that is, any process, activity or broader responsibility that the local authority performs) is the need to ensure that doing so focuses on the needs and goals of the person concerned.

# Offences – Whether to Charge

- How does this sit with public duty to investigate offences / prosecute if the test is met?
- Key consideration: the interests of justice
- Wishes of the complainant is important – but cannot be the only consideration
- Public protection considerations

- Consumer Protection from Unfair Trading Regulations 2008
- Three main offences in the context of doorstep sales:
  - Misleading Actions (Regulations 5 and 9 CPUTR)
  - Misleading Omissions (Regulations 6 and 10 CPUTR)
  - Aggressive Commercial Practices (Regulations 7 and 11 CPUTR)
- Note: the essence of these offences is NOT dishonesty but **falsity** in respect of certain key characteristics (regs 5 and 6) and **harassment, coercion or undue influence** (reg 7)

- Of the three key offences, will focus on Aggressive Commercial Practices offence, but for completeness:
- Misleading Actions – Regulation 5:
  - Commercial Practice contains false information in relation to key matters OR
  - Overall presentation deceives or is likely to deceive the average consumer in relation to key matters AND
  - It causes or is likely to cause the average consumer to take a transactional decision he or she would not have taken otherwise
- Offence of strict liability – no requirement of intention to deceive / dishonesty. The offence can be committed unknowingly.



- Misleading Omissions – Regulation 6
  - A commercial practice is a misleading omission if it omits material information
  - Hides material information
  - Provides material information in a manner which is unclear, unintelligible, ambiguous or untimely  
OR
  - The commercial practice fails to identify its commercial intent, unless this is already apparent from the context AND
  - As a result causes or is likely to cause the average consumer to take a transactional decision he or she would not have taken otherwise
- Offence is strict liability – but subject to statutory defences

- The key provision for us to consider when we are discussing targeted abuse of vulnerable people in particular is the offence of Aggressive Commercial Practices
- Regulation 7 (1):
  - A commercial practice is aggressive if it significantly impairs / is likely to significantly impair the average consumer's freedom of choice or conduct
  - In relation to the product concerned
  - Through the use of harassment, coercion or undue influence AND
  - It thereby causes or is likely to cause him or her to take a transactional decision he or she would not have taken otherwise

- Regulation 7 (2):
  - Account shall be taken of timing, location, nature or persistence
  - The use of threatening or abusive language or behaviour
  - The exploitation of the trader of any specific misfortune or circumstance of which the trader is aware
  - Any onerous or disproportionate contractual barrier to consumer exercising rights AND
  - Any threat to take any action which cannot legally be taken.
- Regulation 7 (3):
  - Coercion includes the use of physical force
  - Undue Influence means exploiting a position of power in relation to a consumer so as apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer's ability to make an informed decision.

# Offences – Fraud Act 2006

- New area of responsibility for Trading Standards Services – safeguarding vulnerable adults: financial abuse of a different kind
- Fraud Act 2006 establishes a number of offences:
  - Fraud by False Representation (s. 2)
  - Fraud by Failing to Disclose Information (s. 3)
  - Fraud by Abuse of Position (s. 4)

- In context of financial abuse of the vulnerable focus on the under used offence in s. 4

*(1) A person is in breach of this section if he—  
occupies a position in which he is expected to safeguard, or not to act against,  
the financial interests of another person,  
dishonestly abuses that position, and  
intends, by means of the abuse of that position—  
(i) to make a gain for himself or another, or  
(ii) to cause loss to another or to expose another to a risk of loss.*

*(2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.*

- Why this offence? Offences of this kind are increasingly prevalent. Officers called upon to make a s. 42 enquiry should be alive to a person in a caring role for a vulnerable person exploiting them financially.
- Some indicators to be aware of:
  - Signing over property to a person not apparently closely connected to the vulnerable person
  - Making substantial monetary gifts
  - Employing large numbers of people for reasons which are not apparent
  - Dissipation of savings without any benefit to the vulnerable person / apparent purpose
  - Unexpected inability or failure to pay care home charges etc.

# Effective Evidence Gathering

- In tandem with a consideration of whether and what to charge: steps to preserve your evidence
- Where a victim is vulnerable, it can be particularly important to obtain full and detailed accounts at an early stage
- Have regard to the potential need for Special Measures and Hearsay Applications
- A witness who is now capable of giving evidence may not be able to by the time of the trial
- Effective evidence gathering allows the effective presentation of the evidence whichever means is ultimately required

# Effective Evidence Gathering

- Full and detailed statements at an early stage
- Consider ABE video statements
- Statements of neighbours/family/supporting evidence
- Body-worn video or other contemporaneous material
- 999 calls/other reports



# Special Measures - Eligibility

- Section 16 Youth Justice and Criminal Evidence Act 1999 – Age and Incapacity
- Age – Under 18
- Incapacity – quality of evidence likely to be diminished by reason of
  - Mental Disorder within the meaning of the Mental Health Act 1983
  - Other significant impairment of intelligence or social functioning
  - Physical disability or physical disorder
- Quality – Completeness, Coherence and Accuracy

# Special Measures - Eligibility

- Section 17 Youth Justice and Criminal Evidence Act 1999 – Fear and Distress
- Quality of evidence likely to be diminished by reason of fear or distress about testifying in proceedings
- Taking into account
  - Views of the Witness
  - Nature and alleged circumstances of the offence
  - Age
  - Social and Cultural Background and Ethnic Origins
  - Domestic and employment conditions
  - Religious beliefs or political opinions
  - Behaviour towards witness by accused, members of accused's family or associates, or other persons likely to be an accused or a witness in proceedings

# Special Measures – Available Measures

- Available measures include
  - Video-recorded evidence-in-chief
  - Live-link, including from remote location such as the home of the witness
  - Screens
  - Intermediaries
  - Aids to communication

- Section 116 – Witness Unavailable
- Hearsay evidence is admissible under this section if any of the following conditions apply
  - The witness is dead
  - The witness is unfit by reason of bodily or mental condition
  - The witness is outside UK and not reasonably practicable to secure attendance
  - The witness cannot be found
  - The witness does not give evidence due to fear, and the Court gives leave (leave to be given only if satisfied in interests of justice – requirement for leave only applies to “fear” condition)

# Hearsay - Admissibility

- Section 116 – Witness Unavailable
- Burden of proof on party seeking to admit the evidence
- Standard, where sought to be admitted by Prosecution, is criminal standard
- Where witness is deceased or unfit to be a witness, evidence “is” admissible
- But residual discretion to exclude under s.78 PACE 1984

# Hearsay - Admissibility

- Section 114(1)(d) – “Interests of Justice”
- Evidence admissible if Court satisfied in interests of justice for it to be admitted
- Must have regard to matters in section 114(2)
- Should not be used to circumvent the procedure in s.116



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