

PE1756/I

Age Scotland submission of 2 October 2020

Age Scotland is the national charity for older people. We work to improve the lives of everyone over the age of 50 so that they can love later life.

We support and enable hundreds of older people's community groups across Scotland, provide information and advice through our free helpline and publications, tackle loneliness and isolation and much more. We work to influence policy makers and run campaigns to make Scotland the best place in the world to grow older.

Last year our helpline received hundreds of calls relating to concerns about adult safeguarding and enquiries about elder abuse. The number of calls about this had increased on the previous year.

In general, these calls were from family members rather than the older person themselves, and the majority will relate to family members feeling that a Power of Attorney is not acting in best interests of the granter based on a number of different issues. Therefore, the calls are not necessarily related to housing or a non-tenant.

How can housing legislation support people who are experiencing elder abuse in their own home?

This petition specifically relates to a non-tenant abuser, which does reduce the ability of housing legislation to protect the person who is being abused.

Local authorities, housing associations and housing co-ops are able to evict a tenant for 'Antisocial behaviour or conduct amounting to harassment'¹, however this would require the perpetrator to be a tenant of the home they are living in.

The Adult Support and Protection Act (2007) introduced a duty on local authorities to protect 'at risk' adults. In these circumstances the local council has a duty of care towards the at risk adult and a number of local agencies, such as the social work department, the NHS Board and the police, must investigate, work together to share information and to protect the older person from harm.

The act defines adults at risk as those aged 16 years and over who: are unable to safeguard their own wellbeing, property, rights or other interests; and are at risk of harm; and because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.

Whilst the Adult Support and Protection legislation provides councils with the ability to issue a banning order, this can only be put in place if the at risk adult is likely to be seriously harmed and it is considered that banning the abuser from a specified place will protect the adult at risk more than removing them from that place. A banning order must be applied through the Sheriff court, which is a stressful and more time-consuming process. This process is likely to present a significant barrier in and of itself, even with support to navigate the system.

¹ https://scotland.shelter.org.uk/get_advice/advice_topics/eviction/eviction_from_council_housing_association_or_co-op_accommodation_and_temporary_accommodation

Our concern is that older people are already unlikely to report elder abuse as they are likely to face psychological barriers when asking for help if the abuse they have experienced is from a relative that they love and fear getting into trouble, especially if they are dependent on them for care. As with other victims of abuse, they may feel shame and guilt if they have been led to believe the abuse is their own fault and this can make it difficult for older people to talk about their experience. It is important to recognise that there may be communication barriers which prevent an older person from speaking out, such as cognitive impairments such as dementia or language barriers if English is not their first language.

In the SPICe briefing that accompanies this petition, it states that 'In practice, housing professionals are likely to consider elder abuse in the same way as they would domestic abuse in assessing a housing or homeless application.' While this is an understandable action as both relate to abuse in the home, an older person experiencing elder abuse may not be eligible for much support during and after their reporting of abuse.

Limitations to the existing legislation

Many people who experience abuse (in the home but not domestic abuse) will not be classed as 'vulnerable', and so will not be able to access the support under the Adult Support and Protection Act that could lead to a banning order.

If someone is not 'vulnerable', is being abused and the abuse is a crime, the onus is likely to be on them to seek a non-harassment order or a banning order to keep the abuser from their home.

If the abuse is insidious but not a crime, it looks like there is no power to help as a non 'vulnerable' person would be presumed capable of taking steps to protect themselves.

Recommendations

This petition has rightly highlighted a significant gap in the legislation and protection available for older people who are experiencing abuse in their home. Age Scotland is supportive of further legal mechanisms such as suitable statutory aggravations or a specific crime against elder abuse. It is important that those who target people due to their perceived vulnerability should have this reflected in the legal process when they are tried for their crimes.

An increased awareness among those who work in any frontline service to recognise the signs of elder abuse is required, in a similar way to the increase in awareness of the signs of domestic abuse. There needs to be greater support for the person experiencing the abuse and this would require a more collaborative approach among frontline services.

Further resources

Age Scotland has produced a guide about elder abuse, aimed at providing resources for people to seek help and to better understand the various forms that elder abuse can take.²

² <https://www.ageuk.org.uk/globalassets/age-scotland/documents/ia---factsheets/legal-and-family/leg-9-elder-abuse-worried-about-someone-oct-2019.pdf>