

Chapter 4

The Elderly and Crime in England and Wales



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Introduction

When considering the topic of the elderly and crime, one tends to concentrate on the elderly as victims of crime and to forget that some of the elderly commit the same types of crime as those committed by younger age groups. As in most countries throughout the world, the elderly, defined here as 65 years of age and older, commit only a small proportion of the total number of crimes committed in England and Wales.¹ Nevertheless, those older persons who are criminal offenders are subject to being processed in the justice system in generally the same manner as those offenders in other age groups accused of crime and also have essentially the same rights as any other person accused of a crime. Although elderly persons are more likely to be the victims of crimes rather than those who commit crimes, there are many examples of the elderly being the perpetrators of crime. The older population is increasing in both England and Wales. The changes in the demographics of the population present challenges for the government in terms of the economic and social costs these changes present.

The Elderly as Offenders

The challenges presented by the elderly as perpetrators of crime can be viewed through the prism of a large, highly publicized case which occurred recently in England, the Hatton Garden Safe Deposit Case. The issues that the case brought into focus include the elderly as the perpetrators of crime, their motivation for committing the crime, the way that the criminal justice system processes older

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Box 4.1 The Hatton Garden Safe Deposit Burglary

A high-profile case arose in London when a group of predominately elderly criminals broke into a safe deposit room in the diamond district of Hatton Garden and stole a huge sum of valuables in various forms. By its nature, it is impossible to accurately assess what was taken from the boxes, as many owners will not divulge the accurate contents stored in their safety deposit box. However, the amount stolen was estimated as at least GBP 14 million of gems and other valuables.

The ringleaders, Terry Perkins, age 67; John “Kenny” Collins, age 75, who happened to have hearing problems; and Daniel Jones, age 61, were tried and convicted and received 7-year sentences. Quartermaster William “Billy the Fish” Lincoln, age 60, also received 7 years, while Carl Wood, age 59, who quit the gang before the burglary was completed, was given 6 years. Hugh Doyle, age 49, allowed the group to use his office, and he was given a suspended sentence. Brian Reader, age 77, was the oldest member of the group of thieves, had a stroke while in prison, and after recovery was sentenced to 6 years and 3 months in prison. During the sentencing, Judge Christopher Kinch, Queens Counsel (QC) stated, “The burglary of the Hatton Garden Safe Deposit vault in April, 2015 has been labeled by many“ ... ”as the biggest burglary in English legal history.”

offenders, the sentencing of the elderly, and the challenges associated with holding the elderly offenders in custody. Finally, there was the issue of what to do with the elderly offenders after their release back into the community.

It is clear that this was a massive burglary and that it stands in a class of its own in regard to the scale of ambition of the thieves, the details of the planning, the level of preparation, and the organization of the team carrying it out, as well as the value of the property stolen.

Despite the comments of the judge, who seemed to imply that the older offenders were receiving severe sentences because of the factors mentioned regarding motivation, planning, preparation, and the value of the property stolen, in reality those given the longest sentences would be eligible to be free from prison in less than 4 years. Although the sentences may seem to be far below the level normally to be expected for a conviction of a crime of the gravity of the Hatton Garden Safety Deposit case, the reality is that burglary carries a 10 year maximum sentence and there is normally a discount of around a third for a guilty plea, so the sentences were well within expectations. If it had been younger men who had committed the crime, perhaps the prosecution would have been more successful with their argument that this was a special case requiring sentencing outside the usual range and perhaps the sentences would have been much longer, particularly since the men were career criminals and two-thirds of the value of the property stolen was still missing at the time of the sentencing.

The Criminal Justice Process in England and Wales: Processing the Older Offender

The beginning of the criminal justice process against a perpetrator of a crime starts with the police investigation. The prosecution service can assist in this investigatory stage, but generally does not get involved until later in the process, except in high-level special and complex cases where early legal advice can be critical.

Before there is an investigation of an alleged crime, the relevant authorities, who are generally the police, have to recognize that the alleged offense has actually occurred. Many crimes are never detected or known to the police. Often, in cases of theft of property, the victim may not realize that the property was stolen. For example, in cases of missing jewelry, the victim may think it was misplaced, or the owner of a missing wallet may think it was lost. At times the victim, particularly an elderly person, might not report a crime out of fear of retaliation from the offender. The offender may be a family member, and the victim might not want to see the person get into trouble. In cases of abuse and violent crime, if the older person has mental issues, that person may not realize that any abuse has occurred. Even the most serious crimes are sometimes not reported out of embarrassment mixed with fear of re-victimization through the investigation and court process. Rape has traditionally been such a crime. In short, if the offense was not detected or reported, there is as far as the criminal justice system is concerned no crime nor any victim. This “dark side” of crime and victimization makes it difficult to know the real extent of crime as well as precisely who are the victims of crime. If an elderly person becomes a suspect, that person may be questioned either under arrest or pre-arrest. At that point, specific issues relating to the elderly begin to come into play.

When someone becomes a suspect and is dealt with by the police, a carefully balanced set of procedures must be followed. These procedures are spelled out in the Police and Criminal Evidence Act of 1984 (PACE).² This Act was established partly as a reaction to improper actions of some police who were insufficiently regulated in fulfilling their functions by previous legislation. Under PACE, there are strict regulations on police powers in regard to the treatment of suspects. These regulations are spelled out in the Code of Practice section of PACE. There are eight extant codes given in the law. They are:

- Code A pertaining to stop and search
- Code B pertaining to search and seizure
- Code C pertaining to detention and questioning and treatment of suspects
- Code D pertaining to the identification process
- Code E pertaining to the tape recording of interviews
- Code F pertaining to visual recording of interviews
- Code G pertaining to the arrest process
- Code H pertaining to detention, treatment, and questioning of persons under Section 41 and Schedule 8 of the Terrorism Act of 2000³

Elderly suspects accused of a crime may have a particular need of the protections provided by the Codes in that they may not fully understand the pre-prosecution process. The law requires that they be carefully given legal advice about their rights, so that they can fully understand these rights before making any statement that might be potentially harmful for their case. When a suspect is brought to a police station for the purpose of questioning that person about a crime, a careful assessment must be made of the suspect's physical and mental state. A suspect should only be interviewed if they are fit to be interviewed. The Codes were set up to find a balance between the police's duty to investigate the alleged crime and the rights of the suspect to fair treatment under the law giving full regard to their human rights. Code C, dealing with the questioning and treatment of detainees and those being interviewed by the police, has been of particular importance as a protection to defendants from being bullied into giving statements against their interest.

In some cases, the trial process has shown that there has been a serious breach or breaches of the Codes. In such cases, the judge may exclude evidence so obtained. This is particularly true in cases when the nature of the breach or breaches might render the evidence obtained as being unreliable.

Code C1.4 states, "If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to dispel that suspicion, the person shall be treated as such for the purposes of the Code." This provision of the Code would require the presence of an appropriate adult to ensure the proper treatment of the person if mentally disordered or mentally vulnerable.

The protections provided in the various Codes of Practice (PACE) are important because experience shows that those in custody can give statements which are self-incriminating, even though the person giving the self-incriminating statements may be innocent of any wrongdoing. Furthermore, even if technically guilty of a crime, in the criminal legal system of England and Wales, a defendant has a strong collection of rights that serve as protection from mistreatment by the police and other functionaries of the criminal justice system. The assurances of these rights for some older persons suspected of crimes, particularly those who may not have full mental capacity, are considered to be very important.

Diversion (Alternatives to Prosecution)

Cautioning is an increasingly important method used for diverting offenders out of close engagement with the criminal justice system. There are two types of caution, the simple caution for adult offenders and the conditional caution. First-time offenders who have committed a low-level crime are often given a simple caution, which means no further justice system involvement. A caution can often be offered if it is a low-level crime and the first offense. There must be consistency followed in the use of cautioning. The same procedures for granting the caution must be followed regardless of the characteristics of the person being cautioned. The offender must

also admit to having committed the criminal act. The Conditional Cautioning Code of Practice (Part 3, Criminal Justice Act 2003) allows a caution with conditions. The offender who is cautioned with conditions is expected to complete the conditions set by the court (a type of informal probation), and if the person does not violate the conditions, there is no record of the conviction.

Having the opportunity to be diverted from the justice process through *the cautioning process* is an important alternative benefit for older offenders, especially the first-time offender. The elderly commit crimes for a variety of reasons. At times, older offenders might commit crimes out of need, as in cases where they steal food because they are hungry. At other times, the offense might be something like a simple assault where no injury occurs, perhaps as a result of a petty argument. Some older persons lose their ability to control their emotions or overreact if they are experiencing mental health issues and as a result may commit an assault against a family member, caregiver, or close friend that they might never have even considered during the period of time of their life when they were fully mentally competent. Older offenders might also commit crime out of ignorance of changes in the law. As society changes, social norms of behavior change, and new laws and regulations are added to regulate the behavior of the citizens. The elderly often may not keep up with the changing social mores and the attendant regulations and may continue to engage in behavior that was not necessarily a violation or a criminal act in the past. Thus having an opportunity to adjust their behavior without receiving a criminal record is likely to be important to elderly persons particularly those who pride themselves as being law abiding citizens.

When the Crown Prosecution Service is balancing the arguments for and against *a caution* disposition, they will typically consider the advanced age and physical or mental conditions of the offender as factors to be used in favor of the caution disposition of the case. In cases where the crime is too serious for a caution or for other reasons a caution is not appropriate, or where there is a degree of mental disorder and the offender is elderly, it is in the best interests of justice to consider alternatives to imprisonment such as probation and other community-based treatments that make use of the community health services and counseling provided in the community.

Decision to Prosecute the Elderly Suspect

The decision to prosecute is one for the Crown Prosecution Service (CPS) headed by the Director of Public Prosecution (DPP). The decision to prosecute or not to prosecute will be based on the Code for Crown Prosecutors (the Code). The Crown Prosecution Service is a separate institution from the police, and the two institutions function differently. The police focus on investigating cases, whereas the CPS focus on taking the results of the investigations and making the decision whether to prosecute and, where the decision is to prosecute, then preparing the legal case for court. There are two hurdles to pass before the CPS allows a prosecution to

proceed, the evidential test and the public interest test. The first test asks whether on the basis of the evidence, if the case was brought to a trial, is there more of a likelihood that there would be a conviction than a likelihood that there would be an acquittal. The second hurdle pertains to the public interest, namely, is the proposed prosecution in the public interest. This second test may be very relevant if, for example, the suspect is very old or infirm or if the crime, in the sense of the extent of the harm done to the public, does not have much of an impact on the community or the victim of the crime.

A broad range of factors pertaining to the extent of the harm done to society and to the victim of the crime are taken into consideration when the decision whether to prosecute is made. As previously mentioned, if the severity of the offense is low, it may not be in the public's interest for the CPS to prosecute. This might, however, not be the case if, for instance, the elderly person was of sound mind and had a history of repetitively committing the minor offense, for instance, repetitively stealing small amounts of money. In that situation, the offender would probably have had the opportunity for diversion on previous occasions and not taken the opportunity to change the offending behavior. The small amounts taken with each theft may be objectively insignificant and lead one to believe that it is not in the public interest to prosecute the offender, but in such a case, the reasoning of the CPS may be that if some punitive action is not taken, the offender is not going to stop the course of criminal behavior, and the harm to society might become more extensive.

Mens rea, meaning "mind of the defendant" in law, refers to whether the defendant has a guilty mind. To have mens rea, a person needs the mental capacity to commit an offense. Proving mens rea is one of the two key elements to proving a criminal offense in England and Wales. In cases involving the elderly, the presence of mens rea may be unclear due to the older person being mentally ill or confused about the act committed. In cases pertaining to dishonesty heard before a jury, it can be very difficult to prove what was the mental state of a defendant at the point when a crime occurred. Thus it can be difficult for a jury to determine if the prosecutor's case is clear enough to prove that the mens rea element was proven. The prosecutors have to prove their case so that the jury members are sure of each element of the case or satisfied beyond reasonable doubt, and this is a high standard of proof.

Prosecutions can also be carried out by the Serious Fraud Office (SFO). Some of the elderly defendants charged with crimes related to fraud are very rich, having made their money through complex frauds. In these cases, the SFO has several powers⁵ to prosecute which are not available to the CPS.

Pretrial Detention of the Elderly

The initial detention of a suspect occurs at a cell located in the police station. However, if a person is charged with a crime that can result in imprisonment and the suspect is not bailed, the defendant is removed from the police lockup to a prison. Depending on the nature and seriousness of the crime and the

circumstances, the person could be imprisoned for several months or longer before being brought to trial. As soon as a person goes into police custody, issues may arise about the physical and mental health of the accused and the overall suitability of detention. In those cases in which an elderly suspect is accused of committing a serious crime and it has been demonstrated that the older defendant has been convicted of serious crimes in the past, the person may be held in prison on the basis of being a threat to the welfare of society, even though some of the conditions that apply to a person being bailable, such as old age and mental or physical disabilities, are shown to be relevant to the case.

A significant number of the elderly held in jails and prison have physical health problems. For example, one of the defendants in the Hatton Garden case who was 77 years old not only had a stroke while being held in pretrial detention but he also had hearing and sight problems, was suffering from prostate cancer and had been admitted to hospital for septicaemia.

Trial of Elderly Defendants

Given that a considerable amount of time is likely to pass between the initial arrest of an elderly defendant and the trial, there is a danger that the physical or mental health of the defendant will deteriorate. This deterioration is a risk, even when the trial occurs quickly after the initial arrest.

Another scenario particularly relevant to the elderly is when the crime was committed years before the defendant became old. There are many examples where, for some reason, the crime was never dealt with for years, even decades. However, the suspect is finally arrested, and since there is no statute of limitations in criminal cases in England and Wales, the defendant who committed the crime when relatively young is now old and potentially facing a serious trial. Some types of crimes by their very nature can generate very long delays. Perhaps the best examples are of concentration camp guards and administrators who are accused of committing war crimes during World War II but have only recently been discovered and brought to trial. Other cases consist of young children who were sexually molested by a parent, guardian, or caretaker who do not report the crime until they are in adulthood. Other cases involve money laundering or corruption that often takes years of investigation before the prosecutor believes there is enough evidence to win the case. Even a murder trial would usually have to wait until a body was found. For some cases, the tools needed to prove the guilt of the defendant were not available, but after recent developments in the use of DNA and other sophisticated forensic techniques, it is now possible to bring forth a strong case against the accused even though the offenses occurred many years prior to the trial.

Some lengthy delays are the fault of the prosecution and may result in an abuse of process hearing, when the judge can rule that the case cannot proceed because of the violations of the rights of the defendant, which include unreasonable delays.

In addition, there may be an issue around the fitness of an elderly defendant to make a plea. In some cases, the person may have been mentally capable of knowing right from wrong at the time the crime was committed, but if many years had passed, the mental capacities of the elderly defendant may have deteriorated to the extent that they do not have the capacity to put in a proper plea.

Another possible reason for not holding a trial is on the basis of insanity. If insanity is established, the judge will usually order that the defendant must undergo some form of medical supervision.

If a trial of an elderly person goes ahead, there may be problems around their hearing, vision or even ability to sit and concentrate in Court during the normal court day. Hearing issues may affect their ability to hear questions. Vision issues may affect their ability to see evidence in the form of photographs, plans, videos and other forms of evidence, as well as being able to see the demeanour of witnesses in Court. Many of these issues are dealt with by courts when dealing with deaf, dumb or blind defendants. They can be overcome but do present extensive challenges.

Sentencing of the Elderly Offender

When sentencing the elderly offender convicted of a crime, the sentencing judge or magistrate will have to consider factors which apply to the elderly as well as bearing in mind the factors which apply to offenders of other age groups.

If an elderly offender is sentenced, similar factors as those that pertain to the decision to caution or not may come into play when the judge is considering the severity and length of sentence, such as the extent of the harm done to society and to the victim of the crime. As previously mentioned, if the severity of the offense is low, it may not be in the public's interest for the judge to impose a heavy sentence. This might, however, not be the case if, for instance, taking the earlier example, the elderly person was of sound mind and had a history of stealing small amounts of money. In that situation, the offender would probably have had the opportunity for diversion on previous occasions and not taken the opportunity to change the offending behavior. The small amounts taken with each theft may be objectively insignificant and lead one to believe that it is not in the public interest to impose a heavy sentence. However, in such a case, the reasoning of the judge may be that if some punitive action is not taken, the offender is not going to stop the course of criminal behavior, and continuation of such behavior cannot be tolerated. Another risk is that the offending could worsen and the harm to society might become more extensive.

There is a concept in the justice system referred to as "Doli Incapax"⁶ that is used in the legal system when dealing with children. It means that a child below a certain age is considered unable to understand the difference between right from wrong and thus cannot be held responsible for his or her actions. This legal practice applies in England and Wales in cases in which the defendant is below 10 years of age. Interestingly, principles which are the same as the *Doli Incapax* principle are used

in various European countries, and in a number of these countries, a child can be considerably older than 10 and still not be considered criminally liable. It is by nature an arbitrary concept and focused on the age of the individual and not on the specific subjective understanding of an individual child. Accordingly, an argument could be made that such blanket treatment should be given to elderly defendants who reach an age when there is almost no chance a prosecution would ever be carried out.

Challenges Around Enforcing Sentences on Elderly Offenders

There are many unique challenges related to the enforcement of sentences given to the elderly convicted of crimes. The elderly may have mental, physical, or mobility problems which make them ill-suited for imprisonment, particularly given that the infrastructure of many outdated prisons in England and Wales is not constructed to provide the type of living quarters and other facilities they need for their daily functioning. Medical and mental health facilities in a prison will probably be wholly inadequate to treat and support an elderly person with medical or mental issues. Considerable thought has gone into the challenges around imprisonment of older criminals.⁷ The Ministry of Justice acknowledged the fact that “Older prisoners are the fastest growing age group of our prison population.” The Lord Chancellor accepted that “the fabric of some of our prisons and approved premises present particular challenges” and went on to state that “The needs of older prisoners should be addressed by prisons as a part of a wider approach to supporting all those with health and social care needs.” The Lord Chancellor stated that the Ministry of Justice accept the challenge that it “should produce a national strategy for the care and appropriate regime for older prisoners to provide for minimum standards that produce effective and equitable care.”

Treatment of Older Offenders Post Serving Sentence

The Ministry of Justice also accepts some responsibility for the welfare of elderly prisoners post release from prison. The responsibilities include resettlement and providing continuity for healthcare if special care is needed. It is recognized that a “failure to connect the community healthcare and the prison healthcare systems has a tangible and negative impact on the healthcare outcomes of older offenders when they enter prison and also when they leave prison.” If the community healthcare system and the prison healthcare system are not connected, the continuity of older person’s healthcare program will be disrupted.

People of any age coming out of prison often do not have a good support network of family and friends, particularly if they have experienced a lengthy period of incarceration. Thus it is the responsibility of the welfare system and healthcare

services to provide some assistance in the reintegration of inmates to the community, particularly in those cases in which the support system from family and friends is nonexistent. A lack of family and community support networks is especially challenging for elderly persons released from prisons. Often they are homeless, not capable of finding employment, and have limited financial resources. In addition, a large number may have physical or mental issues. If they have been in prison for any length of time, the community support system will probably have weakened or totally disappeared.

The Elderly as Victims of Crime in England and Wales

The elderly often hold considerable assets in England and Wales. Thus, one of the reasons the elderly are targeted by criminals is because the criminals believe that they have something to steal. Another reason is that they are considered vulnerable. They often live alone and often are not up to date with communications technology, and they may suffer from physical or mental handicaps. All of these factors make them an attractive target for predatory criminals.

In the past, the most common types of crimes committed against the elderly outside the home were street crimes such as muggings. The criminal knew the elderly person was probably not as fast or as strong as younger persons and thus not as likely to fight back, resist, or give chase. Burglary of the homes of the elderly was also considered relatively safe for the criminals.

Currently, as technology has speeded up the process, the elderly outside the home have become prime candidates for cybercrime. Criminals are tapping into their mobile phones and computers resulting in them becoming victims of identity theft and many other scams and frauds.

The Effects of Being a Victim of Crime

When the elderly become victims of crime, several effects may occur that are more likely to relate to the elderly than to other victims of crime in other age groups. These include:

- They may not understand that a crime has occurred.
- They may not report the crime.
- They may not give sufficiently detailed and accurate evidence to the police investigating the crime. As an example, poor eyesight will affect the quality of identification evidence.
- They may have a poor memory or become confused about the events relating to the crime.
- They may be afraid the offenders will retaliate and be unwilling to give evidence.

Because of this:

- They may be afraid of the court process. Depression resulting from the victimization, anxiety, and even mental illness may be factors among the elderly victims that contribute to a reluctance to give evidence in court. If an older person is muddled or confused, they are unlikely to give convincing evidence in the depth necessary for the trial process.

Susceptibility of the Elderly to Being Targets of Crime

Criminals committing crimes for profit will usually tend to look for easy targets. Those criminals who are financially motivated will tend to look for maximum profits while exerting minimum efforts and taking low risks. Certain crimes may appeal to a criminal as they may seem to be easier to carry out against the elderly. This first group includes crimes such as robbery. The elderly may be targeted even in those cases in which the victim appears to be healthy and of sound mind because they are perceived to have less physical ability and to be less likely to be able to defend themselves than those potential victims who are of a younger age category. Another second group of crimes may be targeted on the elderly because they are perceived as not having the ability to understand modern technology, especially those aspects that deal with digital technology and complex financial transactions. These types of crime often do not require face-to-face contact between the offender and victim and only require that the perpetrator use trickery or deception to carry out the crimes, such as Internet scams.

The first groups of crimes mentioned include street robberies, handbag snatches, and “muggings” in which the offender may target persons on the basis of thinking that they are easy targets. An elderly person may be unable to fight back with the vigor of a younger person. The victim may be frightened by the attack or may be unable to chase the offender after being robbed or having a handbag snatched. There are examples of criminals receiving a nasty surprise when they had tried to “mug” an elderly person and when the potential victim was able to defend himself and in some cases subdue the criminal. However, in the large majority of cases, the elderly are likely to be relatively easy targets.

Knowing that they are vulnerable, many elderly become afraid to leave their houses even in the daytime. Thus they become victims as a result of their fear of becoming a victim. The more crime ridden their neighborhood is, the more likely it is that they will be afraid to go out of the safety of their homes, particularly after dark.

The second group of crimes mentioned includes more sophisticated crimes such as fraud and cybercrime and when targeted are based on the perception that the elderly person may not fully understand how to operate in the high-tech Internet age. Cybercriminals will target the elderly because they think the elderly are more likely to fall for the trickery and deception associated with Internet scams and various frauds. Examples of such frauds include a cybercriminal contacting a

potential victim online and claiming to represent a bank and requesting private information such as bank accounts which can be financially plundered. Other examples include when the potential victim is contacted and tempted by being informed that a sizable amount of money has been granted, inherited, or won in a lottery and the money will be transferred to the victim's bank account. For this crime to be successful, the victim must be cooperative and provide the personal information requested by the criminal, who believes that older persons will not be able to understand that they are being tricked or that their desire to get something for nothing will motivate them to cooperate.

One of the oldest types of scams for which elderly persons are often victimized is related to home repair scams. These scams usually involve criminals posing as builders going to elderly person's homes and saying they need work done, typically on their roof when in actuality there is no need to repair the roof. The phony home repair person is depending on the vulnerability of the older person to go along with making the repairs out of lack of confidence and lack of information about the type of repairs needed or merely on the impression that the repair person "looks honest." This type of crime is even worse when the person has gained entry into the inside of the house and has the opportunity to steal items from the house. The phony repair person may give several reasons for going inside the house, such as a request to use the toilet or to get a glass of water. Sometimes the repair person will deliberately damage the roof to show the person that the work is needed. At times, the criminal may ask for an advance to buy the needed materials and never show up again. If some repair work is completed, the perpetrator of the scam will often grossly overcharge the victim by submitting a bill that exceeds the estimated cost of the work. If the victim complains, the phony repair person will threaten the victim. The criminals expect this type of scam to work with the elderly because they think the elderly victims will be confused, embarrassed, or afraid. Furthermore the criminals may think that even if the crime is reported to the police it is unlikely that the perpetrators will be arrested and prosecuted because of the difficulties in proving dishonesty as well as the reluctance of the victim to give evidence.

Crime Against the Very Old and Infirm

Those persons who are very old and no longer can care for themselves and are thus either in care homes or living at home and being cared for by a family member or a caretaker are often vulnerable to a different form of victimization than that previously described. It is very likely that such persons will suffer from serious physical incapacity or mental degeneration or from other mental challenges such as Alzheimer's and dementia.⁸ As the number of persons falling into this category increases, the number of cases of elder abuse will be likely to increase unless there is proactive action taken to ensure the proper treatment of those who can no longer take care of themselves.

The way a society looks after its most vulnerable members should be a measure of the merit of that society. On that basis any abuse of the elderly in care homes or at home should be dealt with in a firm manner. Well-crafted laws need to be enacted to prevent the type of victimization relating to both physical and psychological abuse and theft of property that too often occurs in care homes in which the elderly reside. In addition administrative measures and systems for the careful screening of personnel should be closely scrutinized and improved to assure that victimization does not occur. The victimization of the elderly who live in their own homes and are cared for by family members or professional caregivers is more difficult to detect and counter. However, those Doctors and Nurses who administer healthcare to the elderly can be trained to be more aware of signs of abuse, and be trained in understanding and implementing the appropriate options available to them should they suspect abuse.

Private care homes exist primarily for profit so there needs to be the likelihood of serious consequences to the owners of the care home if cases of abuse or property theft are discovered. These options should include heavy fines as well as custodial options. If their business model is threatened, then the private care homes will become better at policing themselves. However, there are problems around prosecuting the offender if a criminal act in a care home has occurred. The victim may suffer from debilitating physical or mental illness making it difficult for the victim to provide a reliable account of the incidents and potentially providing excuses for the signs of physical abuse which could be blamed on the person falling or some other accidental occurrence being the cause of the harm to the victim.

The Elderly Fulfilling other Functions in the Criminal Justice System

The Elderly Witness

The elderly most often appear in Court as witnesses to a crime or as a result of their being victims of crime. As a witness giving testimony, the same problems relating to giving of evidence and the quality of the evidence as mentioned above arise. The elderly person may have poor memory, poor eyesight or poor hearing. It has been noted, however, that when an elderly person gives evidence, that evidence can be powerful evidence and critical to obtaining a conviction. If the elderly witness gives his or her evidence confidently and clearly and is not confused by cross examination, the fact that an elderly person is there in person to provide the testimony is often very persuasive.

However, the mental state of the witness must also be considered. For example, in cases where the witness is an elderly person and the offense occurred in a care home, there may be a question of the mental competence of the witness and even though the witness gives quality testimony, the offender might not be convicted.

The Elderly Juror

In England and Wales, the upper age limit to be eligible for jury duty is 75. Until recently it was 70, but since so many people over the age of 75 are fully physically and mentally capable, even the 75 age limit may seem arbitrary. Jury duty is one of the few responsibilities of a person on the electoral register. Given that the value of a jury is related to the knowledge, wisdom, and shared experiences of the combined jurors, it may be disappointing that so many people, who could help in a jury and probably have the time available, since they are probably retired, are essentially disallowed from taking on the responsibility on the basis of their age.

A juror needs to stay healthy for the length of a trial which, although averaging 2–3 days in length, may take several weeks. The courts in England and Wales normally sit from 10:30 a.m. to 1:00 p.m. and from 2:00 p.m. to 4:30 p.m., so the juror must be able to sit still and concentrate for a period of up to 2 and a half hours. As long as someone over 75 years of age can do the above, there seems no good reason to bar them from sitting on a jury.

The Elderly Prosecutor

Most of the serious prosecution work is carried out by a member of the private Bar under instruction from the Crown Prosecution Service. There is no age limit on a barrister. Of course, the CPS would only brief a barrister who they considered extremely well qualified to conduct the trial in question and they are constantly updating their assessment of senior barristers who they brief.

Conversely if the CPS were to use a qualified inhouse lawyer to prosecute the case, the maximum age of such a lawyer would be controlled by CPS retirement rules. These have become somewhat vague recently, due to developing legislation including human rights arguments but at this time 65 is likely to be the retirement age in most cases.

The Elderly Judge

In contrast to the change made for serving on juries in which the age was increased from 70 to 75, the upper age for serving as a judge was recently lowered from 75 to 70. This discrepancy may seem somewhat illogical. The reasoning behind the change in age for judicial retirement was the possibility that the judges would become infirm in body and mind after the age of 70. Lord Neuberger, at that time President of the Supreme Court and the most senior judge in England and Wales,

lobbied to have the age of judicial retirement remain at 75. He pointed out that lowering the age at a time when general retirement ages were increasing seemed to be a “bit odd.”

Conclusion

It is noticeable how little information has been written on crime and the elderly in England and Wales. This is quite inappropriate, given the growing size and nature of the challenge. It may reflect on issues relating to elderly studies generally that not enough attention is given to the issues of the elderly population. Much is written about the vulnerable young, and I would argue that the elderly as a group are just as deserving of academic and political attention as are the young.

There can be a perception that at the time that a convicted offender is being sentenced, the victim has almost been forgotten. This is unfortunate. If the victim is elderly, the physical or mental effects of being a victim of crime can be particularly serious. Many members of the public believe that the victim of the crime should have more input on the sentencing process. More attention should be given to the victims of crime and the suffering caused by the crime instead of almost all the attention seemingly being focused on the rights of the criminal. Thus, while sentencing hearings now regularly hear victim impact statements and while it is clear that this progressive advance helps the victims to express the damage done to them, it is less clear what difference the impact statements make in the actual sentence given to the convicted criminals. It often appears that, due to cost and capacity issues, all of the pressure is to find ways to shorten or reduce the sentences, regardless of the damage done to the victim. Research should be done to determine what real effect the victims’ impact statements have on the sentencing of criminals. This should include focus on instances where the elderly have the quality of their remaining life permanently damaged due to the physical or mental effects of being a victim of crime.

In cases in which the victim is an elderly person, the vulnerability of the victim should be considered, together with an assessment of the degree of malfeasance in targeting them and the overall effect the crime had on the victim. This needs to be in addition to assessment of the actual facts around the event. Such long-lasting effects include the fear of going outside or depression, and the long-range physical effects on the elderly persons in cases which include assault and abuse. While a just society must treat those accused and convicted of crime fairly, it must also protect and compensate those who are the victims of crime. An estimated 1.2 million persons live in England and Wales,⁹ who are lonely and perhaps alienated, and any one of them can have their life greatly worsened by becoming a victim of crime. The Criminal Justice System in England and Wales has a proud tradition of fairness, and it should do more to improve the position and treatment of elderly persons.

Discussion Questions

1. Discuss the reasons why a large number of crimes against the elderly are never detected or reported to the police.
2. What are the benefits of diverting older offenders out of the system rather than having them processed through the formal criminal justice system?
3. What are some of the major roles an older person can perform in the criminal justice system? What factors must be considered in determining if an elderly person can serve as a judge? Jury member? Prosecutor? Witness?
4. Discuss the pre-prosecution process in England and Wales. How might the process differ when an elderly person is the defendant rather than a younger person is the defendant?
5. What are the differences in the “career” habitual offender and the “situational” offender in regard to older criminal offenders? Should the habitual offender be treated differently than the situational offender?
6. The trials of older offenders accused of serious crimes (murder, rape, corruption) may be very complicated and time consuming. Discuss some of the reasons why such trials may be more complicated when the defendant is an elderly person.
7. Discuss the major reasons for the increase in the amount of crimes committed by the elderly in England and Wales.
8. Discuss the reasons why older persons are targeted for crime victimization.
9. Discuss the practice of *cautioning* used in the justice system of England and Wales. In what types of criminal offenses would cautioning be the most beneficial for the older offender as well as for the community?
10. Discuss the types of victimization of the elderly that is most likely to occur in nursing homes, hospitals, and residential facilities for the elderly.

Notes

1. The law of England and Wales differs substantially from that in Scotland. Differences also exist in Northern Ireland. Accordingly, England and Wales are considered as a homogenous unit, whereas the United Kingdom as a whole is not.
2. The Police and Criminal Evidence Act 1984 (PACE) made provision for the issuing of Codes of Practice.
3. See—Archbold 2017. Appendix A.
4. Conditional Cautioning Code of Practice. Criminal Justice Act 2003. Sections 22-37.
5. Criminal Justice Act 1987 (CJA). Powers including the power to require persons to answer questions and produce documents.
6. In England and Wales, the age of criminal responsibility is 10. Below that age, it is assumed that children are *doli incapax* (incapable of crime) because they are

too young to understand right from wrong and cannot be held responsible for their actions.

7. Government response to the Justice Committee's Fifth report of Sessions 2013-2014.
8. *Mental Disorders in Old Age*. By Eva Hilger, Peter Fischer.
9. Age UK Registered charity number 1128267.