



Undue Pressure or Moral Obligation: Religious Gifting and Undue Influence

Journal:	<i>The Journal of Adult Protection</i>
Manuscript ID	JAP-04-2020-0012.R2
Manuscript Type:	Legal Paper
Keywords:	Undue Influence, Religious Institutions, Safeguarding, Coercion, Gifting, Adults at risk

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Introduction

Adults at risk (discussed below) can suffer abuse, the main perpetrators are often understood to be their family, friends and/or carers. However, charities, including religious institutions, have the potential to exploit this group of people. Hedlund (2016: p. 299) argues that ‘... religious institutions are particularly vulnerable to being found liable for undue influence because of the psychological impact that religious devotion can have on people. As such, special care must be taken when religious institutions ask for and accept gifts and donations’.

This paper will consider the relationship between gifting to religious institutions and undue influence. It will consider free will and autonomy and how that relates to adults at risk. Reasons for gifting during a person’s lifetime (inter vivos gifting), and how this correlates with undue influence will be explored. It will also highlight potential safeguards that can be considered to protect those who gift (donor) as well as the institutions receiving such gifts (donee). There is a fine line between undue influence and feeling morally obligated to donate. We need to understand where the line is if we are going to protect both parties to the transaction. Many of the concepts discussed within this paper has broader application, however, religious institutions provide an example of how gifting and undue influence relate to one another.

What is evident is that prior to gifting, a discussion between a donor and an independent third party would be beneficial. In addition, religious institutions should continue to be proactive in protecting donors to safeguard their own position. For those institutions that do not have a policy or charter in place governing how gifts are accepted, accountability could come in the form of a compulsory charter created by the Charity Commission, an organisation established by s 6 Charities Act 2006 to oversee the activities of charities.

Adults at Risk and Free Will

Adults at Risk

In order to provide context to the discussion in this paper it would be prudent to first set out the definition of an adult at risk. This would be particularly beneficial to understand why this group would be open to abuse by religious institutions, and therefore why both parties to the transaction may need to be alert to undue influence. Firstly, it should be noted that although the term is applicable to a wide variety of circumstances, in this context, the paper considers adults at risk from the perspective of adult safeguarding in England.

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3 In accordance with s 42 Care Act 2014, an adult at risk is one who is 'experiencing, or at risk of, abuse
4 or neglect, and as a result ... is unable to protect himself ... against the abuse or neglect or the risk of
5 it'. Abuse in this context includes 'being put under pressure in relation to money ...' (s 43(3)(c) Care
6 Act 2014).
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11 Previously, such adults were considered as vulnerable. In fact, the courts continue to have an inherent
12 jurisdiction to protect adults (with mental capacity) who they believe are vulnerable and where the
13 law does not provide for a remedy. An in-depth discussion of the differences between the terminology
14 is beyond the scope of this paper. However, it is noted that vulnerability, as referred to by Pritchard-
15 Jones (2018), relates to an internal characteristic together with abuse. The notion of a vulnerable adult
16 was criticised for reinforcing the stigma attached to having an impairment, and as a result, suffering
17 abuse (Pritchard-Jones, 2018). Pritchard-Jones (2018: p. 54) argues that the term 'at risk' continues to
18 invoke '...the idea that the inability to protect oneself from abuse [is] because of a need, which is
19 generated by an impairment or a disability...' and therefore blames the individual for having suffered
20 the abuse.
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29 *Free Will and Capacity*

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31 Rousseau (2016: p. 211) suggests that free will is '... an individual's capacity to make choices without
32 certain constraints: physical (imprisonment), social (threats or manipulation) or personal (mental
33 illness)'. She goes on to state that 'Free will is both an individual and a social construction, born out of
34 how the brain talks to itself and the expectations and opportunities human communities convey to
35 their members. A belief in free will affects not only individual behavior but also its persistence, through
36 the level of commitment individuals have to a course of action they have chosen (Salancik and Pfeffer,
37 1978)' (Rousseau, 2016: p. 212).
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44 Based on the Department of Health (2008b) Safeguarding adults report Pritchard-Jones (2018: p. 53)
45 suggests that 'Adults with capacity, however, do have a fundamental right to choose their own actions
46 and their own safeguarding plans, though they may need to be assisted and empowered to make their
47 own informed choices'.
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52 It was also suggested by Rosseau (2016) that how information is presented to an individual affects the
53 use of their free will. Where there are options, it can demonstrate that the individual has exercised
54 free will. This is somewhat aligned to the argument above, which suggests that adults at risk should
55 be supported in making their own choices.
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3 The ability to make informed choices is perhaps synonymous with mental capacity. In England there
4 is no single test for assessing an individual's mental capacity for every type of decision. Instead there
5 are various common law tests, depending on the decision that needs to be made. For inter vivos gifts
6 the common law test can be found in the case of *Re Beane* [1978]. In this case medical evidence
7 suggested that the mother was suffering from senile dementia, which had progressed to an advanced
8 stage. However, those present at the signing of the transfer of her property suggested that when
9 asked whether she understood what she was doing, the mother had responded positively and that
10 she signed the document with ease. The court held that the mother did not in fact understand the
11 consequences of her actions. The court also stated that the degree to which a person must understand
12 their actions depends on the circumstances. Therefore, where the decision is trivial the degree of
13 understanding would be lower than if the transaction were of greater value. In addition, the court
14 highlighted that '...since the claims of the [children] and the extent of the property to be disposed of
15 were not explained to the deceased, the transfer was void even if she did understand that she was
16 making an absolute gift of the house...' (*Re Beane*, [1978]: p. 771).

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28 When discussing mental capacity, it would also be prudent to consider both cognitive and situational
29 capacity as they too relate to an individual's capacity to make informed choices. Cognitive capacity
30 relates to the ability of an individual to make decisions, despite suffering from an impairment of the
31 mind or brain. The Mental Capacity Act 2005 which provides the legal framework for decision making
32 for or on behalf of those who lack mental capacity provides a line beyond which an individual should
33 be assisted to make decisions. The Law Commission (2017: p. 18) confirmed that, '... the law sets a
34 threshold for when the degree of the disorder, illness or impairment renders a person incapable to do
35 the act or make the decision'. In these circumstances an individual ought to be supported to make
36 decisions and be given the opportunity to understand the consequences of the same.

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44 Situational capacity is where the court's inherent jurisdiction is invoked to fill the gaps left by statute.
45 The court will use its inherent jurisdiction when an individual is 'i) Under constraint; or ii) Subject to
46 coercion or undue influence; or iii) For some other reason deprived of the capacity to make the
47 relevant decision or disabled from making a free choice, or incapacitated or disabled from giving or
48 expressing a real and genuine consent' (*DL v A Local Authority & Others*, [2011]: 22). This would
49 require an application to be made to the court for a declaration (before the transaction took place)
50 that the individual had the capacity to make such a decision. Alternatively, the application to the court
51 would be made after the transaction had taken place, to put right the wrong that had occurred. In this
52 instance it would not prevent undue influence from taking place but reverse the effect of it.

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3 It is therefore clear that adults at risk need to be supported to make informed decisions. However,
4 what is unclear is the point at which an individual would need to be assessed as needing support. The
5 Law Commission (2017), when discussing capacity to make a will, suggested that the general
6 consensus is that lawyers or medics may be best placed to make such an assessment, but that the key
7 consideration should be a long standing professional relationship with the individual rather than a
8 single, one off meeting. It is presumed that a third party would only step in if there were concerns as
9 to the individual's capacity to make a decision. It is also more likely that the individual would have a
10 longstanding relationship with their religious institution (albeit this would be a non-professional
11 relationship) as opposed to their lawyer or doctor (in terms of assessing risk). Should this be the case,
12 even with policies in place, religious institutions may feel uncomfortable in making an assessment,
13 particularly where their decision may later be challenged in court or where a conflict of interest may
14 arise.

24 **Rationale for Religious Gifting**

27 *Attitudes*

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29 There are various factors which influence an individual's reasons for gifting to a religious institution.
30 For example, Lincoln *et al* (2008) argue that attendance and commitment are more likely to indicate
31 that the individual will gift to the religious organisation. It is suggested that this may no longer be a
32 significant factor particularly so during the Covid-19 pandemic where religious institutions were not
33 accessible. In accordance with Government guidance (2020), from 2 December 2020, based on the
34 Tier system to prevent the spread of Covid-19, it is illegal for those in Tier 1 to meet in groups of more
35 than six indoors or outdoors, including places of worship. There are further restrictions for those in
36 Tiers 2 and 3, which make it difficult for groups to congregate to worship together (correct at time of
37 writing).

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39 Furthermore, Lincoln *et al*'s literature review of 2008 highlights that studies have shown that the more
40 conservative, as opposed to liberal, your religious views are, the more likely you are to give and the
41 more you would give. This seems to suggest that those who donate on this basis have preconceived
42 ideas about gifting, and that they cannot be easily influenced either way. It was also suggested that
43 reciprocity may be a better indicator of giving, the idea being that the more you get back from your
44 religious institution the more likely you are to invest in it. This reflects a balanced approach to gifting
45 whereby an individual can rationally consider what is in their best interests given their financial means
46 and whether they should be gifting, and if so the extent of such a gift.

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3 Peifer (2010: p. 1570) stated that 'both the sense of community felt by individuals and the religious
4 meaning of individuals induce religious giving'. He highlights various reasons as to why an individual
5 may donate, such as the size of the congregation, suggesting that the more exclusive or strict the
6 congregation is the more generously individuals' gift. For strict churches, who require the worshipper
7 to follow a particular way of a life, or dress code, it is suggested that 'free riders' are eliminated and
8 therefore only those fully committed remain and are more likely to give more generously (Peifer, 2010
9 referring to Iannaccone's strictness hypothesis).

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16 When discussing the amount one gives, Peifer (2010: p. 1572) suggests that 'Generally speaking,
17 religious values instruct one to give more while economic motives lead one to give less'. This therefore
18 requires the individual to understand the extent of the gifting, in comparison to their means. Peifer
19 provides several hypotheses for why an individual would gift more or less, the discussion is beyond
20 the scope of this paper. However, it is interesting to note that the notion of reciprocity, as referred to
21 above seems to suggest greater donation.

22 23 24 25 26 27 *Obligations to Give*

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30 One way an individual may feel obligated to gift is by way of a tithe. Budiselic (2014) suggests that
31 there are several definitions of what a tithe is, how it is paid and to whom it must be paid to. This
32 paper will take the view that a tithe is an obligation to give to the church. The purpose of the tithe
33 being to support the local religious organisation and the work undertaken by it in the local community.
34 Budiselic also suggests that the rationale for the tithe is as a result of charitable giving, and to support
35 those less well off. However, Nelson argues that 'People feel condemned, guilty of robbing God if they
36 don't give the tithe and beyond. Many feel that their relationship with the Lord is in jeopardy and that
37 His favor will depart if they don't give' (Budiselic, 2014: p. 152). This is supported by Keeton and
38 Gowertt (1934: p. 338) who argue that there was a time when '...the jurisdiction over wills of
39 personalty had passed to the ecclesiastical courts and so testators wishing for safe passage to heaven
40 were likely to leave a one third share of their personal belongings to the church. This viewpoint, it is
41 suggested, is an archaic interpretation of the tithe within the Old Testament. Sherwin (2016), in his
42 blog, highlights his interpretation of giving within the New Testament. In particular, he sets out that
43 one ought to

- 44 1. 'Give out what you do have, not out of what you don't.
 - 45 2. Give willingly, not under pressure.
 - 46 3. You must each make your own mind up about how much to give'.
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3 Moretsi (2009) suggests that the New Testament provides principles that should be followed, rather
4 than a specific amount that must be given. These principles include; gifting should be a 'free and
5 spontaneous act; that it should be balanced between the individuals means and the needs of others;
6 that gifting is a demonstration of faith and that the more generously you give the more God will give
7 back to you; that there should be mutual appreciation of the gift; and that gifting reflects Jesus'
8 example of giving to the needy and poor (Moretsi, 2009: p. 406).
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14 Of course, there are likely to be those traditionalists who continue to believe in a monetary
15 requirement to tithe (Croteau, 2005) because that is the way it has always been done in their church,
16 or those who preach the tithe in terms of pragmatism. Croteau (2005) suggests that this is where
17 church attenders are encouraged to gift a percentage of their income as it is easier to explain than
18 attempt to understand the complexity of how the tithe should be applied.
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24 In the Muslim faith the equivalent of the tithe is the zakat. This is said to be the concept of
25 'redistribution of wealth prescribed by God to the deserving category of people' (Rahim and Kasawadi,
26 2014). The calculation of the zakat appears to be more rigid than the tithe, although it seems to be
27 applied differently amongst different countries. In accordance with the National Zakat Foundation in
28 the UK the zakat is a 'core obligation that requires Muslims to make an annual payment of 2.5% of
29 their qualifying wealth' (National Zakat Foundation, 2020). Rahim and Kasawadi (2014: p. 54) suggest
30 that the zakat is both a spiritual duty and a compulsory gift to be given by every Muslim, and that
31 'whoever pays the zakat on his wealth will have its evil removed from him'. It is argued that any
32 reference to the act of giving as being compulsory, or relating it to evil, takes away free choice and
33 raises the presumption of undue influence.
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42 The dana on the other hand, which relates to Hinduism and Buddhism is a much more fluid notion.
43 The emphasis is much more on giving without expectation and that it should be spontaneous and
44 anonymous (Eck, 2013). Unlike the zakat it does not appear to be as prescriptive and seems to suggest
45 more free will. However, monetary gifts can be significant, and it is unclear how such faiths ensure
46 that their followers are safeguarded generally, and more specifically in relation to undue influence.
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51 Many faith groups instil moral obligations upon their followers to give to their faith. There is therefore
52 an uncomfortable dichotomy between faith and the law on undue influence in England and Wales. By
53 suggesting or claiming that such gifting is a compulsory act, or that by not giving the individual will
54 suffer in any way, it is contended that this raises the presumption of undue influence.
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58 **Undue Influence**

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3 Where a gift is made inter vivos there are two ways in which undue influence will arise. Firstly, by way
4 of actual undue influence. This relates to improper pressure that was applied to an individual by
5 another (Ridge, 2004). Barclays Bank v O'Brien [1993] confirmed this as the requirement of proof that
6 exertion was applied. The case also confirmed the second method by which undue influence would
7 be present, and this is by way of a presumption. This relies on there being a relationship of trust and
8 confidence and where it is fair to presume that there was an abuse of this relationship (Melling and
9 Pagni, 2001). The presumption of undue influence will automatically arise due to the existence of this
10 relationship. Where such a relationship exists, the burden of proof shifts from the donor to the donee
11 to demonstrate that they acted in good faith in receiving the gift and had not unduly influenced the
12 donor. Ridge (2004) suggests that presumed undue influence is where there is a strong relationship of
13 trust and confidence where one party has a significant influence on the decision making powers of the
14 other, and where the action by the donee cannot be easily explained. Furthermore, there are two
15 ways in which this relationship can arise the first being as a matter of law. The second being a
16 relationship which generally reposes trust and confidence, such as a spiritual advisor and follower
17 (Ridge, 2004; Melling and Pagni, 2001). It was stated by Jarboe (1991: p. 274) that the donee '... must
18 prove by clear and convincing evidence that he exercised his own good faith in the transaction and
19 must show the grantor's free, voluntary, and intelligent ie. informed action'.
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33 In relation to spiritual advisors, it was stated in Nottidge v Prince [1860] that 'no person who stands
34 in a relation of spiritual confidence to another so as to acquire a habitual influence over his mind can
35 accept a gift or benefit from the person who is under the dominion of that influence, without the
36 danger of having the gift set aside' (Winder, 1939: p. 101). This notion could be applied to regular
37 requests to donate at weekly services, whereby the religious institutions arguably obtain a habitual
38 influence over the donor's mind. However, there would also need to be a less plausible reason to
39 make such a donation. Arguably, donations at weekly services would be minimal and potentially more
40 proportionate to one's financial means, however, as Peifer (2010: p. 1574) suggests 'religious gifting
41 [could be] driven by the social monitoring of other congregational actors' which influences the amount
42 donated and which could be more than the donor could afford to give.
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50 It could be argued that those likely to question a donation would be close relatives or friends, who
51 may also have the same beliefs and are therefore unlikely to consider that there is a dominion over
52 the donor. It is also difficult to define when pressure and persuasion becomes coercion. This is
53 highlighted by the Law Commission (2017: p. 137), who stated that 'The line between legitimate
54 persuasion and undue influence is not always clear. There is a wide spectrum between egregious
55 instances of undue influence and the innocent appeals of relatives seeking to curry favour with the
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3 testator. The line is crossed when the testator would say “this is not my wish, but I must do it”. So as
4 to ensure that not every donation is brought to question, Lindley LJ suggested in obiter that the gift
5 made needs to be ‘... so large as not to be reasonably accounted for on the ground of friendship,
6 charity, or other ordinary motives on which ordinary men act’ (Allcard v Skinner [1887]: 185). Having
7 considered the principles of giving above, it is suggested that if there is an obligation to gift this could
8 fall within this category and therefore be considered as having raised the presumption of undue
9 influence. However, the donation would need to be disproportionate to the donor’s financial means
10 for it to be fully explored as such.
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18 Various factors may deter someone from making a claim that undue influence has taken place. Firstly,
19 by suggesting that undue influence is in existence, they will in effect be accusing someone of immoral
20 behaviour. They may be reluctant to do this, particularly if it is a religious institution that they support,
21 and where the community will frown upon such challenges. Furthermore, if they bring an unsuccessful
22 claim, they may be ordered to pay costs, which can be quite high (Parry and Kerridge, 2016). It could
23 also be argued that the courts do not encourage such a claim, as per Sir Gorell Barnes’ obiter
24 comments in Spiers v English [1907] where he stated that undue influence ‘ought never to be put
25 forward unless the party who pleads it has reasonable grounds upon which to support it’ (para. 124).
26 This almost seems to suggest that only where you have clear evidence of coercion should you make a
27 claim, as otherwise it is unlikely to be successful. This is supported by comments made by Lewison J
28 in Edwards v Edwards [2007] where he referred to a ‘... high burden ... that the claimant bears in
29 proving undue influence’ (para. 47). Bigwood (2002) explains the difficulties in proving undue
30 influence in two stages; firstly, is the opportunity to pursue a personal interest too far removed from
31 the donee’s responsibilities towards the donor (and therefore the relationship of trust and confidence
32 does not arise); and secondly, is there enough incentive for the donee to impose any influence
33 (suggesting that the lower the value of the gift, the less incentive there would be to unduly influence)?
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46 In light of the above discussion, it appears that in a relationship between a spiritual advisor and
47 follower there would be a relationship of influence, however, unless the gift is ‘large’ or
48 disproportionate to the donor’s financial means it would not raise any suspicion.
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50 51 **Possible Solutions**

52 *Certification*

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56 In accordance with the case of Kenward v Adams [1975], where a solicitor taking instructions from a
57 client in respect of their will, is unsure as to whether the individual has mental capacity to provide
58 such instructions they should adopt the Golden Rule by way of best practice. The case specifically
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3 refers to testators (those making the will) who are aged or seriously ill, and suggests that where this
4 is the case, then their will should be witnessed or approved by a medical practitioner who ought to
5 record their examination of the testator and their findings. Ultimately, lawyers should seek
6 confirmation from a medical practitioner that their client has the mental capacity to prepare and sign
7 the will. What is being sought is confirmation that the testator understands the nature and effect of
8 creating the will; that they understand the claims that may arise as a consequence of preparing their
9 will in that manner; that they understand the size and extent of the assets that they are able to
10 distribute under their will; and that they are not suffering from an impairment of the mind or brain
11 (Banks v Goodfellow [1870]). The case of Custard v Templeman [2020] affirmed that the principle is
12 not a rule of law, but merely guidance to avoiding litigation or disputes.
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21 The case of Etridge [2001], which related to a wife acting as a guarantor for her husband, considered
22 the issue of undue influence, and although it acknowledged that this could not be prevented, it
23 suggested that some level of protection would be desirable. In particular, the principle drawn from
24 this case was that where a bank is put on enquiry, they would be required to take reasonable steps to
25 ensure that the guarantor understands the risk of acting as such (including the extent of their liability)
26 and that they take independent legal advice before acting in that capacity. A bank would be put on
27 enquiry in every case where the relationship between the guarantor and debtor is non-commercial. If
28 banks do not follow this guidance, they run the risk of not being able to enforce their security.
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35 It is therefore suggested that religious institutions should be put on notice where an adult at risk is
36 gifting, and in such instances encourage the adult at risk to seek independent legal advice. Such advice
37 would then be recorded in a form of certificate to be retained by the donee. This would support an
38 adult at risk to make an informed decision, as a lawyer could provide a clear explanation of the nature
39 and extent of the gift being made, as well as the consequences. However, it is acknowledged that the
40 Golden Rule only applies to gifts made in a will (testamentary gifting) and that neither the Golden Rule
41 nor the principle in Etridge would prevent undue influence from occurring. Of course, as stated
42 previously, the starting point is that a person is free to make their own decisions, even if unwise and
43 so having explained the nature of their actions, and so forth, the donor is entirely free to decide to
44 continue. The difficulty in providing a certificate would be in the assessment of whether undue
45 influence is present. It is argued that a single, one off meeting with a lawyer would not enable
46 detection of such influence. Although it may provide the donor with an opportunity to discuss any
47 coercion it is unlikely that they would be so candid with a stranger.
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58 Furthermore, there is a cost attached to obtaining legal and medical opinion. The donor is likely to
59 undertake a cost/benefit analysis of whether to seek such opinion to protect their gift. The assumption
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3 therefore is that if the donor believes the gift to be small (a subjective interpretation) no such opinion
4 would be sought. In addition, the definition of an adult at risk includes a person who cannot protect
5 themselves. As such they may not be aware that they require assistance in making a decision and
6 therefore not seek the relevant advice.
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11 It is envisaged that such certification would be of benefit for very large gifts, which appear to be
12 disproportionate to the donor's financial means and where perhaps a challenge to such a gift is
13 anticipated. It could be that religious institutions include a requirement within their policies for adults
14 at risk to seek independent legal advice where the donation being made is large. This may not prevent
15 a challenge of undue influence; however, it would provide the donor with some level of protection.
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19 20 *Accountability* 21

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23 Upon searching the Charity Commission website for places of worship, there were approximately
24 107,406 registered charities which contained one of the following words: church, synagogue, mandir
25 or mosque (as at 17 April 2020). This is only a rough estimation, and closer scrutiny of the register
26 would be required to ascertain the exact number of religious institutions that are registered as a
27 charity. Nevertheless, it does provide a guide as to the number of regulated charities in existence who
28 would be subject to the Charity Commission regulations and guidance.
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34 It should be noted that registration with the Charity Commission is not required in all circumstances.
35 However, where the organisation is in receipt of an annual income of more than £5,000 per annum,
36 they would be required to register with them, and this would include places of worship that exceed
37 this threshold. It is argued that there is a lack of guidance by the Charity Commission aimed specifically
38 at religious institutions and how to prevent undue influence.
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44 In addition to guidance provided by the Charity Commission, charities may also voluntarily adopt the
45 Code of Fundraising Practice created by the Fundraising Regulator. The Regulator is an independent
46 third party who oversees fundraising by registered and non-registered charities as well as
47 organisations that are not overseen by the Charity Commission. It should be noted that this is a
48 voluntary scheme, and organisations who fundraise are not required to adopt it. Nevertheless, it is
49 suggested that by way of best practice, this could be a form of regulation which would make religious
50 institutions accountable for their actions towards raising donations.
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56 There are several instances within the Code of Practice where guidance is provided on how fundraisers
57 can protect themselves from being accused of having unduly influenced a donor. For example, '1.2.1
58 [states that] While reasonable persuasion is allowed you must not fundraise in a way which ..., is
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3 unreasonably persistent or places undue pressure on a person to donate' (Fundraising Regulator,
4 2019: p. 11). In addition, section 8.1.1 of the Code states that, the fundraiser must not act dishonestly,
5 manipulatively or make the donor feel guilty if they chose not to donate (Fundraising Regulator, 2019).
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9 Much of the guidance provided to charities and fundraisers focus on language relevant to undue
10 influence. However, definitions or case studies are not provided, and institutions are left to their own
11 imaginations as to what would constitute reasonable or unreasonable. It is therefore suggested that
12 such Codes of Practice and guidance provided to institutions be made clearer.
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16 Individual religious institutions are also welcomed to create their own codes of practice. For example,
17 The Church of England have created the Parish Safeguarding Handbook to ensure that safeguarding
18 policies are implemented, maintained and investigated where necessary. Unlike generic safeguards
19 referred to above, this handbook specifically acknowledges that 'workers in places of worship' (Church
20 of England, 2018) are amongst those who could abuse adults. It suggests that '...some adults may not
21 consider themselves vulnerable but may be vulnerable to being abused by individuals in positions of
22 leadership and responsibility' (Church of England, 2018: p. 54). It highlights that abuse comes in many
23 different forms, and can include coercion under psychological abuse (Church of England, 2018)
24 although it does not specifically link such abuse being instigated by the worker, which it is argued it
25 perhaps should.
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29 Another example of self-regulation and accountability can be seen from the National Catholic
30 Development Conference Inc. The organisation is US based, and it is less stringent than The Church of
31 England guidance. The guidance sets out that 'the donor has the privilege of deciding his or her own
32 reasons and purpose for the first, whether the gift is modest or large' (National Catholic Development
33 Conference Inc, 2008: p. 11). However, for larger gifts there is the suggestion that the donor submits
34 a proposal in the first instance for consideration. If the proposal is then accepted, an
35 acknowledgement letter should be sent once the donation has been received and for more complex
36 cases an agreement should be created, much like a contract (National Catholic Development
37 Conference Inc, 2008). This latter suggestion would perhaps force the donor to seek independent legal
38 advice before entering into such an agreement, as referred to in the previous section.
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42 In terms of accountability it is perhaps prudent to create a single source which is applicable to all
43 religious institutions. Currently, each institution is left to determine what safeguarding policies they
44 put in place, and this therefore has the potential to create inconsistencies. As a starting point the
45 Charity Commission could create a set of compulsory rules to ensure that religious institutions follow
46 the same steps to ensure that donors are not gifting for reasons related to undue influence. It appears
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3 that the only way that this can be done is to ensure that donors seek independent legal advice. This
4 would be more appropriate for large donations (which would need to be defined). It may be
5 disproportionate to regulate small regular donations, but instead include safeguarding policies were
6 workers within a place of worship are vigilant as to the individual's circumstances and raises suspicion
7 where appropriate.
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10 11 12 **Conclusion**

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15 There are many reasons as to why an individual will donate to a religious institution, and without
16 expressly stating such reasons it is often seen as the donor's right to donate in whatever manner they
17 see fit. However, it is argued that some forms of donating or gifting, which are compulsory, have the
18 potential to indicate undue influence. Furthermore, adults at risk who are experiencing or are at risk
19 of experiencing abuse and who cannot protect themselves need to be supported in making a decision
20 to donate. The scope and focus of this paper is on religious institutions, however, the concepts could
21 easily be applied to other institutions and organisations.
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28 The law in England and Wales is clear on what undue influence is, although in practice it is very difficult
29 to prove when persuasion turns into coercion. Therefore, such claims are not likely to succeed unless
30 there is clear evidence indicating that an individual has been coerced into gifting. Religious institutions
31 need to be provided with case studies and clear examples of what is and is not deemed to be
32 acceptable forms of fundraising so that they can be vigilant and ensure that such donations and gifts
33 are not set aside.
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39 It is suggested that guidance and support ought to come from the Charity Commission. This would
40 provide a single point of reference for all charities, including religious institutions who could protect
41 themselves from challenges to gifts made, and/or be held accountable if they fell short of the
42 requirements.
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47 Where undue influence has taken place, it is perhaps inappropriate to rely solely on the individual to
48 raise their concerns to a third party, particularly with regards to an adult at risk who is unlikely to raise
49 their concerns directly. By its very nature, undue influence is exertion of undue pressure, or coercion
50 on an individual who is unlikely to feel that they can raise concerns without adverse consequences.
51 Therefore, in order to tackle this issue, and to protect adults at risk, more emphasis needs to be placed
52 on religious institutions implementing safeguarding policies to protect both donors and themselves
53 from challenges to gifts made.
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