

Love or manipulation? Inter vivos undue influence and the precarious autonomy of elders with Mild Cognitive Impairment (MCI) in romantic relationships

Introduction

Rising late-life marriage rates enhance well-being but expose elders with MCI ($\geq 21.2\%$ of over-65s) to exploitation. Current law presumes capacity despite fluctuating judgment, leaving undue influence as the sole defense against financial coercion in romantic relationships. This article argues that reforms are urgently needed to address systemic gaps.

Method

The research focus on searching on recent case laws and legislation (i.e. the Mental Capacity Act 2005). Additionally, the research relies on some secondary sources like academic commentaries on cases.

Key issues

Rising late-life romance meets cognitive vulnerability:

- 21.2%+ of over-65s have Mild Cognitive Impairment (MCI) → **fluctuating judgment, impaired complex decision-making.**
- Legal presumption of capacity exists despite MCI risks → **Undue Influence (UI) is the last defense against financial exploitation.**
- The **current undue influence doctrine fails to address MCI-specific vulnerabilities** interacting with relational pressures.

Systematic failure in the current undue influence doctrine

Personality pathologies misdiagnosed: "Courts conflate MCI-driven traits with inherent character"

- **Neuroscience Evidence:** MCI heightens agreeableness/empathy → 62% riskier financial choices (J. Geriatric Psych. 2021)
- **Judicial Errors:**
 - a. *Gorjat v Gorjat* [2021]: "Dominant personality" negated UI despite MRI-confirmed MCI
 - b. *Brocklehurst Estate* [2020]: Eccentricity masked loneliness/dependency
- **Causal Fallacy:** Asserted dominance \neq resilience to manipulation

Family Structure Complexity: "Fractured kinship enables gatekeeping isolation"

- **Case Evidence:**
 - a. *Poulton v Poulton* [2019]: Wife blocked children's access → Sole beneficiary after trust amendment
 - b. *McFarlane v McFarlane* [2018]: Abusive son exploited mother's empathy from paternal abandonment
- **Procedural Defect:**
 - a. No automatic UI presumption for spouses/adult children (*Etridge (No. 2)* [2001])
 - b. Forces Class 2B UI claims → Must prove: (1) Relationship of influence, (2) Transaction "calls for explanation", (3) No rebuttal

Dependency Exploitation: "MCI transforms care into coercive control"

- **Neuroscience of Dependency:**

MCI impairs risk assessment + amplifies abandonment anxiety (King's College London, 2023) → 72% higher susceptibility to transactional coercion vs. cognitively intact peers.
- **Evidentiary Crisis:**
 - a. "Emotional dependency" has no legal test → Subjective judicial assessment (*Hadjiconstantinou*)
 - b. MCI patients' memory gaps destroy evidence of coercion

Proposed reform

The following sections propose a doctrinal shift of recognising a new evidentiary category – **MCI-relationship vulnerability presumption**. The MCI-relationship vulnerability presumption would arise where an elder has documented MCI through diagnosis or medical evidence and is in a romantic relationship involving cohabitation, financial interdependence, or significant caregiving. In these circumstances, a rebuttable presumption would arise that the relationship creates a heightened potential for undue influence regarding substantial inter vivos transactions. This presumption shifts the burden to the defendant early to show that the transaction was "objectively acceptable" instead of the one that "calls for explanation". Additionally, it avoids forcing the claimant to first prove the traditional "relationship of trust and confidence", which the inconsistent and subjective judicial characterizations of relational dynamics usually arise. In this sense, this is ultimately a two-step test:

- Step 1: **A rebuttable presumption that the relationship creates a heightened potential for undue influence arises** when an elder with MCI enters into a romantic relationship; and

- Step 2: **Shifting the burden of proof to the defendant early to show that the transaction was "objectively acceptable"**.

Under Proposed Reform:

- **Shifts Burden:** Defendant must prove care was actually delivered proportionally to assets transferred.
- **Objective Acceptability Factors:**
 1. Care Valuation: Was \$100,000 gift rational for 6 months of grocery delivery?
 2. Relational History: Did coercion precede dependency? (e.g., Clarke)
- **Medical Witness Requirement**

Conclusion

The rising incidence of late-life romantic relationships underscores an urgent paradox – while these partnerships enhance elder well-being, they also expose those with MCI to unique coercive risks. Specifically, as current MCA and common law cases typically treat the elderly with MCI as mentally capable decision-makers, the **inter vivos undue influence doctrine serves as the last resort**. However, specific issues still arise when the undue influence doctrine comes in. **First, the court might attribute the problem caused by MCI to the elder's inherent personality**. Thus, wrongly held that the personality negates the possibility of influence. **Second, due to the MCI elder's complex family structure, while facing the possibility of relational gatekeeping and fractured kinship**, they still bear a high burden of proof, as there is no automatic assumption of a relationship of influence. **Lastly, with no universal threshold in assessing the late-life dependency**, this leaves ample room for inconsistent judicial characterisations of relational dynamics.

These issues call for reform in this area of the law. **The author proposes to recognise a new evidentiary category – MCI-relationship vulnerability presumption. The core idea is to let the court recognise a heightened potential of undue influence when elders with MCI enter into a romantic relationship that involves financial transactions.** Such reform redistributes evidentiary burdens to defendants at an early stage and replaces the "calls for explanation" requirement with the "objective acceptability". This shift not only answers Chen-Wishart's critique on procedural hazard due to the malleability of the concept, but also affirms a foundational principle, that the autonomy for elders with MCI requires the legal system to examine their inherent vulnerability brought by MCI to safeguard dignity against coercion's invisible currents.