

The Royal College of Radiologists

Response to:

Department of Health consultation - New Offence of ill treatment or wilful neglect

The Royal College of Radiologists (RCR) considers the safety and wellbeing of patients to be of paramount importance. If healthcare professionals or organisations neglect patients wilfully or otherwise, the College is entirely supportive of appropriate sanctions. The RCR does not however support the introduction of a new criminal sanction of wilful neglect.

The Royal College of Radiologists has considered the requirement for the introduction of new legislation and the likely impact of it.

The RCR does not perceive there to be a need for additional legislation. Healthcare professionals, and doctors in particular, are already subject to all necessary sanctions to protect patients. Claims can be pursued in the civil courts and sources of funding are available for those without the personal financial means to undertake such claims. Healthcare professionals can also be prosecuted in the criminal courts under the present legal arrangements where there is a possibility of harm to patients.

The suggestion that new legislation would enable organisations to be prosecuted implies that there is not currently the wherewithal to impose sanctions on organisations. However, senior management representatives of these organisations are open to sanctions under the current law and a new law is unlikely to offer additional benefit when organisations may appear wanting in terms of patient care.

As the stakes are higher in criminal prosecutions, there is a need to define very precisely what is meant by 'wilful neglect' before any legislation is introduced. This is likely to prove extremely challenging, if not impossible. There are particular concerns in relation to radiology. Radiologists routinely make decisions about the importance or otherwise of findings that they observe on images. If a decision is found to be incorrect at some future point radiologists are aware that they may be criticised and found to be in breach of their duty of care. How will it be determined whether or not that failing was wilful?

The threat of wilful neglect would weigh so heavily on the minds of radiologists (and probably many other healthcare professionals) that they may practise inappropriately defensive medicine. Doctors would be more likely to order increasing numbers of unnecessary investigations and in some cases prescribe unnecessary treatments.

The RCR believes that there is a need for openness and that learning from mistakes should be encouraged. Available resources should be directed to patient care and to fostering safer environments in our healthcare institutions, rather than used to introduce imprecise and superfluous legislation.

Despite our view that such legislation should not be introduced, we have prepared the following answers to the specific questions asked in the consultation document:

A. Scope of the offence

i) NHS or wider

Much care is provided outside traditional NHS settings so it should apply to all settings where health and social care are provided – both public and private.

Care must be appropriately resourced and organisations/individuals should not be liable to criminal proceedings where shortfall in funding results in inability of that organisation/individual to provide adequate care.

ii) Children

It should apply to formal health, social care and other formal settings where care is given to children and adults.

iiia) Social care

Social care is not our area of specialised knowledge but the equity principle could reasonably be expected to apply to social and healthcare. It is current policy to integrate these services to provide seamless care and it therefore does not seem sensible to have a case where one part of the service can be prosecuted and another not.

iiib) Formal Settings

It should only apply to formal settings.

**B. Elements of the offence
Conduct or Outcomes**

We agree with the proposal that the new criminal offence should focus entirely on the conduct of the provider/practitioner, rather than any consideration of the harm caused to the victim of the offence.

The definition of 'ill treatment and wilful neglect' in health and social care settings needs to be explicit, as does where the boundary lies between individual and system/organisation willfulness.

C. Describing the offence for organisations

Prosecution should only be permitted when an organisation falls far below the expected standard. This should put it in context and fit with the fundamental standards as outlined by the CQC and other regulatory bodies. The approach must be consistent and as simple as possible.

D. Other Issues

i) Penalties

Equivalence should be with current penalties for equivalent offences.

For organisations financial sanctions will always impact on patient care and would exacerbate the situation.

ii) Matters for prosecutorial discretion

Clarification for how this will apply in the workplace will be needed in advance of this.

Overall, as stated above, we do not agree that a new criminal offence of ill-treatment or wilful neglect of patients should be introduced.

The Royal College of Radiologists
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