

**Do you agree with our proposal that the new offence should cover all formal health and adult social care settings, both in the private and public sectors? Please explain your views.**

Yes  No

Our experience is that incidents happen in all sectors. Thus no distinction should be made between sectors.

**Do you agree with our proposal that the offence should not cover informal arrangements, for example, one family member caring for another?**

Yes  No

Our experience is that a significant number of offences are carried out in informal caring situations.

**Should the new offence cover social care services for children, and if so which services should it cover? Please list any children's services that you think should be excluded from the scope the offence and explain your view.**

Yes  No

Too many children 'slip through the net', sometimes for all the wrong reasons. We have developed a culture in Scotland where the care of Children and their safeguarding are paramount. (As it should be, they are our future!) To suggest that areas of childcare and their social services should be exempt from the penalties of failure seems perverse. If a person or service fails through 'wilful neglect or ill-treatment' then there should be clarity about the effects on the perpetrator and the law should be allowed the tools and opportunity to examine their actions.

**Should the offence apply to people who are providing care or treatment on a voluntary basis on behalf of a voluntary organisation?**

Yes  No

Currently the law makes no distinction between service providers whether they are third sector, government agencies or commercial providers. R=They are all expected to perform to the same high standards. There should continue to be no difference with the proposed legislation.

**Do you agree with our proposal that the new offence should concentrate on the act of wilfully neglecting, or ill-treating an individual rather than any harm suffered as a result of that behaviour?**

Yes X No

Because it is difficult to assess 'mental harm' it would be sensible to focus on prosecuting for the 'act' of wilful neglect or ill-treatment.

**Do you agree with our proposal that the offence should apply to organisations as well as individuals?**

Yes X No

The knowledge that an organisation can be called to account for the actions of their employees or volunteers is already sharpening Corporate thinking in the care sector to ensure that suitable training and management feedback systems are in place to ensure compliance with any legislation. There is already evidence, through recent care setting failures, of poor practice and training in both the public and private sector. It is vital that public servants, third sector and private managers know that they can be called to account by the courts to ensure that care practice across the country rises to an acceptable standard.

**How, and in what circumstances, do you think the offence should apply to organisations?**

Yes X No

The offence should apply to organisations where there is an identifiable lapse either in training of individuals (where they fail as carers and commit an offence because they do not know any better), or in planned reductions of service (perhaps for financial reasons), where residents become 'ill-treated or wilfully neglected' through a dictat of a management system.

There should also be a provision for prosecution where it can be identified that managers have failed to properly manage the carers under their control and allowed (and continued to allow) abuses to happen through lack of supervision and/or record keeping.

Failures of leadership should never be an excuse for abuse.

**Do you agree that the penalties for this offence should be the same as those for the offences in section 315 of the Mental Health (Care and Treatment) (Scotland) Act 2003 and section 83 of the Adults with Incapacity (Scotland) Act 2000?**

Yes No X

The penalties under the two sections seem rather light given the pre-meditated nature of a 'wilful' offence.

**Should the courts have any additional penalty options in respect of organisations? If so, please provide details of any other penalty options that you think would be appropriate.**

Yes  No

Organisations such as Health Authorities, Third Sector providers or Private Companies are best punished by appropriate fines, incarceration of managers and continual inspection.

A fine representing a proportion of turnover can be devastating for any operation though potentially not life threatening depending on the wisdom of the court.

Incarcerating a senior manager for even a short term can have a significant effect on any industry and a court order laying down a probationary period of up to three years of continual unannounced inspection can work wonders for recalcitrant operations.

**What issues or opportunities do the proposed changes raise for people with protected characteristics (age; disability; gender reassignment; race; religion or belief; sex; pregnancy and maternity; and sexual orientation) and what action could be taken to mitigate the impact of any negative issues?**

The proposed legislation should give existing regulations in many of these areas a boost as often neglect or ill-treatment is difficult to define and pin down in relation to a particular part of the law.

Negative outcomes? The knock-on effect is difficult to quantify but we suspect the positive gains will outweigh any negative effects.