

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

The new offence should cover formal care settings in both the private and public sector for the following reasons:

It would provide protection and redress to people who do not meet criteria for the Mental Health Care and Treatment Scotland Act 2003 or Adults with Incapacity Scotland Act 2000 where neglect is an issue.

It will encourage people to view this kind of concern in the wider context and send a clear and consistent message re. the consequences of such actions and could help to drive up standards of care in all settings.

It would provide the option of pursuing prosecution of care home owners or agency managers where neglect arises out of failures in management/leadership and a culture of poor practice.

It should apply to care at home services especially as the continuing trend is for people to be supported outwith institutional care for as long as possible.

In terms of Annex A we believe that all people carrying out a caring role should be covered to ensure no one is excluded.

Some clarification would be required – namely, clarification of the terms “formal” and “setting” being used in this context, especially in relation to Self Directed Support where care can be commissioned, contracted and funded through public funding but managed by an individual within their own home.

This legislation should cross reference the Adult Support and Protection Scotland Act 2007 as any adult in receipt of care services and is neglected in very probably an adult at risk as defined by the above legislation.

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

Yes No

It would be too difficult to contextualise informal care in this way due to the variance in these arrangements often without any formal contracts defining role, responsibility and outcomes.

There are already procedures to address carer issues through Adult Support and Protection and care management.

However, it would be relevant to include carers employed under SDS who have a contract of employment.

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

The new offence should cover social care services for children including fieldwork and residential staff.

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

Yes No

Yes where there is a contract in place to provide care and support on a formal basis.

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 No

This is particularly relevant for people with a cognitive impairment for whom the impact may be less obvious if they are unable to express this. In order to be fair and consistent, the focus must always be on the act/omission and not on the actual harm suffered. Potential consequences can be as significant and concerning as actual harm.

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

Yes No

In the experience of Adult Support and Protection services it is not always possible to identify an individual.

Often where concerns are raised about the conduct of an individual, this is symptomatic of failings within the wider organisation. It is important therefore not to assume that the neglect is solely due to the actions of an individual. In these cases a culture of poor care exists and problems raised with managers are not addressed. There may be poor recruitment and training, low numbers of staff, poor supervision, procedures and/or a tolerance of poor care by qualified staff. Staff themselves may not receive support from their organisation. This is clearly the

responsibility of the senior managers or owners of the care home or care at home service to address. Where harm is systemic there should be an avoidance of blame of individuals.

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

Yes No

- Where the organisation has failed to adequately assess people's needs
- Where they have failed to ensure they have appropriately knowledgeable and skilled staff (using safe recruitment practices, proper induction, ongoing supervision, support and training)
- Where a pattern of inadequate nutrition, fluids, heat, privacy, access to social activity, cleanliness, attention to personal hygiene is present.
- Where service users' calls for help or evidence of distress are not responded to or are responded to in an aggressive or punitive manner.
- Where restraint or control or manual handling practices are used inappropriately or unlawfully.
- Where inadequate attention is given to medical needs.
- Where breaches in basic care standards have the potential to cause or have caused significant harm.
- Where complaints have been received and no appropriate action has been instigated to prevent recurrence of the issues raised.
- Where there is evidence of an inadequate approach to safe care at all levels within the organisation.
- Where governance arrangements within the organisation do not address issues of neglect immediately and comprehensively, looking at a whole system response to such issues.

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

To be fair and equitable, it would be sensible to apply the same penalties across all service user groups.

Individuals should also be barred from owning, managing, working in or having an association with care organisations in the future.

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

A “publicity order” making the concerns public (as is within legislation in England).

Suspension on admissions, ban on opening any additional care services for a fixed period, restrictions on type of services provided.

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 changes should encourage all types of neglect/ill-treatment to be viewed seriously regardless of protected characteristics and setting.

In general the proposed legislation could be seen as a positive development to provide a level of protection to vulnerable people not currently covered by other mental health legislation.