



THE LAW SOCIETY
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Dan Curran
The Quality Unit
Scottish Government
GER, St Andrew's House
EDINBURGH
EH1 3DG

15 December 2014

Dear Sirs,

Re: Consultation on Proposals for an Offence of Wilful Neglect or Ill-treatment in Health and Social Care Settings

I write in my capacity as secretary to the Law Society of Scotland's Health and Medical Law Sub-committee. Having reviewed and considered the Scottish Government's Consultation on Proposals for an Offence of Wilful Neglect or Ill-treatment in Health and Social Care Settings, the committee have the following comments.

We support the policy intent behind the proposals. However, we believe that the offence may be unnecessary as such actions will be covered under existing common law. In addition, recourse to a civil remedy may be appropriate from a 'victims' perspective, as this would allow them to be compensated for any harm / damage incurred or suffered.

We are also concerned that the introduction of a new offence may deter individuals from entering Social Care professions. If the proposals are to be carried forward then we recommend that the offence focus on there being an actual injury, either physical or psychological, as a prerequisite to any criminal action. If this hurdle is not crossed then a number of less serious examples of poor care (for example, not providing sufficient emotional support to a patient in a busy hospital environment) could be deemed as neglect and a criminal offence even if the effect of that behaviour is negligible. Requiring a focus on consequences, we suggest, may be a sensible means of avoiding a flood of complaints and prosecutions and creating a sensible distinction between cases of poor care and criminal neglect.

We note that the proposal is for liability to rest with individuals and organisations. We suggest that, in the first instance, liability should rest with the organisation concerned. Only if it is shown that the organisation fulfilled their duties should the individual be then liable to prosecution. However, we recognise that there will be some instances where the nature of the actions will,



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and should, result in the individual being firstly liable, and subject investigation and prosecution where appropriate.

In addition, we suggest that it would be necessary to redefine the offence as “deliberate neglect or misconduct to injury” requiring the criminal investigation to focus on establishing that there was an injury and its extent – although would defer to the criminal law committee – generally would anticipate that they would have concerns about creating a criminal wrong where no obvious intent.

We agree that any new offence should cover social care services for children and this should include services including residential cases, secure care, foster care and specialist foster care.

If you have any questions relating to this, or wish to discuss further, please contact me direct.

Yours faithfully

Brian Simpson

Law Reform

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