

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

Comments: Given that there are likely to be a greater number of facilities which come under this categorisation because there are likely to be more people suffering from dementia or who are disabled, then there is a greater likelihood that this will become an issue in some settings. If more adult carers are employed who do not have sufficient training and qualifications, then the likelihood of something going wrong will increase. Patients/clients do need some protection, carers need at least to have paper qualifications..

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

Yes No

Comments; There will always be the difficulty of proving whether someone is/is not a carer and even if that is the perception then is there a contract between them. Some “caring” arrangements will be looser than others – so would that carer be culpable for an accusation of neglect?

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

Comments: Social care which takes place in Children’s Homes or foster homes should be covered.

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

Yes No

Comments: This is trickier. If a volunteer is made aware of his/her responsibilities then it seems reasonable. But when a volunteer is a “befriender” then it is more doubtful if they could in the legal sense be considered neglectful. It all depends on awareness.

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

Comments: It probably needs to do both.

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

Yes No

Comments: However it may be difficult to make an organisation culpable for the actions (or rather failing to act) of one individual.

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

Yes No

Comments; It would perhaps make more sense to indict an organisation if their staff had been neglectful or used ill treatment on a number of occasions.

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

Comments

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

Comments Ultimately an organisation guilty of a number of offences should be closed at the very least. Maybe organisations need to carry insurance for claims arising from the offences.

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?

CONSULTATION ON PROPOSALS FOR AN OFFENCE OF WILFUL NEGLECT OR ILL-TREATMENT IN HEALTH AND SOCIAL CARE SETTINGS

Summary of Consultation Questions

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 – There should be no distinction between settings: all instances of neglect are experienced as harmful by the patient.

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

NO – Some of the worst abuse is (sadly) perpetrated by family members. The offence should cover all settings.

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 of the offence and explain your view.

YES – it should cover ALL services.

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

YES – volunteers working for a voluntary organisation should be well qualified, trained and supported, and the offence should also apply to them.

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 – but neglect should be stopped at source. A warning might stop things escalating to a criminal level. Professional help should be sought at an early stage. Carers should always seek advice if they are unsure whether or not a condition needs treatment. Failure to report or document accidents could well be criminal.

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

YES –it should always apply, particularly in voluntary organisations, where training is very important.

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. There seems to be no good reason to distinguish these categories from each other.

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 - Organisations should certainly be penalised. There should be a register of failing organisations, for example. But if the crime is serious the person running the organisation should be penalised, and/or the organisation should be closed. Alternatively, replacing failing staff on a failing ward could solve the problem.

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?

There should be absolutely no difference whatever in the treatment given to people with protected characteristics than to others. People are individuals. It is the effect on the person that counts. This change may possibly highlight problems that might be at risk of being ignored: but it may be an opportunity to make sure that training emphasizes the importance of treating every individual with respect and compassion, whatever their background or characteristics.