



Introduction

The Society of Chiropodists and Podiatrists (SCP) has a dual function as both a trade union and a professional body, representing podiatrists who work in the NHS, in private practice and in the commercial sector. The SCP has c.10, 000 members throughout the UK, with over 1,000 in Scotland.

The SCP welcomes the opportunity to respond to the consultation. This response will address some general issues, before going on to answer the specific questions asked.

Whilst it goes without saying that no-one could condone instances of genuinely wilful neglect or ill treatment (harm) to any patient in any setting, The Society of Chiropodists and Podiatrists, as a trade union, has a duty to represent and protect its members. We are therefore pleased to see in the introduction to the consultation, paragraphs 6 &7 which state that the offence is “**not intended to cover instances of genuine error or accident**” and also that remedy and redress through existing formal complaints procedures will remain available.

The concerns that we have are that the new criminal offence might be inappropriately used which would result in an individual going through criminal proceedings unnecessarily, and as the proceedings would be in the criminal justice system professional trade union representation would not be available to them. It is to be hoped that any offence created would have safeguards in place to ensure against malicious prosecution or vexatious litigation

Question 1

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.

The SCP agrees that the new offence should cover all formal health and social care settings whether in private or public sectors. However, we believe that the examples of settings given in the consultation document are inadequate as they do not cover all areas where our members work e.g. health centres, private practices, patients own home, commercial premises, sports shops etc. There is then a danger than arguments could be raised that the setting where the care is carried out is not listed, therefore the offence does not apply. **This requires clarification to remove any ambiguity.**

Question 2

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

Yes.

The offence should only cover areas where there is a legal obligation or a contract to deliver care as the offence is a breach of the legal obligation or contract. We would question as to whether this includes family members who are named as a carer and receive a carer's allowance. Even though this may be seen as a formal arrangement we do not feel it should apply.

Question 3

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, and also in health care

It would be difficult to justify why children should not expect the same protection as adults.

Question 4

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

Yes

There is an ever increasing demand for care and third / voluntary sector organisations do provide such care. The integration of health and social care is now underway in health board and local authority areas across Scotland, including a role for the voluntary sector¹ The Personal Footcare Self-Management Guidance created in collaboration with Scottish Government, The Society of Chiropodists & Podiatrists, the voluntary sector, care providers and others is just one example of the new shape of "Health" care in Scotland today.

Therefore in order to be equitable, the voluntary sector should be included. Some staff who work for the voluntary sector are paid and by the very nature of an agreement to deliver care there is a contract or obligation to provide care.

Question 5

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

However, there needs to be clear definition of the act of wilful neglect or ill treatment. There are many NHS organisations that have within their Disciplinary Procedures under gross misconduct, wilful neglect and ill treatment, which is then in some instances open to wide interpretation.

For example a member of staff was dismissed for wilful neglect and ill treatment of a couple of patients due to the fact that when the staff member was very emotionally upset, they disclosed some inappropriate personal information and broke down into tears. **Whilst this displeased the patients, it was seen at appeal, not to be wilful neglect or ill treatment.**

We fully support the ethos that no deliberate act of ill treatment or neglect is acceptable and if it was based on outcome then, similar acts of ill treatment and neglect may be treated differently. It could be the case that the outcome to the individual is reflected in sentencing, where wilful neglect or ill treatment is proven

Question 6

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

Yes

The organisation should be held accountable for any actions of its employees that are as a result of the organisations practices or procedures. **It would be iniquitous for any individual member of staff of an organisation to be made a "scapegoat" where the organisation can be shown to be at fault , for example in situations such as those listed in answer to Question 7 below**

Question 7

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

It should apply where there are breaches in Health & Safety, failure to act on concerns raised or where concerns are known about patient care and where the policies, practices or procedures of the organisation allow for ill treatment and wilful neglect.

Question 8

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 should be equity for all offences, regardless of what setting the offence occurs.

Question 9

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.

The SCP has no specific or detailed view on the severity of penalties for organisations, other than to note that if there has been systemic failure throughout an organisation it would seem sensible for the organisation itself to be sanctioned rather than any individual member of staff being singled out.

Question 10

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 opportunity here is that all individuals regardless will be afforded the same protection.

References

¹The footcare guidance and associated resources can be found at <http://www.knowledge.scot.nhs.uk/home/portals-and-topics/personal-footcare>.

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