

Marie Curie is the UK's biggest provider of high quality care for people who are terminally ill. In Scotland we treat close to 6,000 people each year through our community nursing services, hospices and other services.

We welcome the opportunity to respond to the consultation on Proposals for an Offence of Wilful Neglect or Ill-treatment in Health and Social Care Settings.

We agree with the proposals to introduce an Offence of Wilful Neglect or Ill-treatment in Health and Social Care Settings, but would encourage further mechanisms for explanation, definition and support as detailed within our responses below.

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

We agree with the proposal that the new offence should apply in all health and social care settings, in both private and public sectors.

However, we have concerns that the creation of the offence could unintentionally lead to a blame culture which inhibits openness, transparency and candour for fear of negative sanction. These principles are key in safeguarding patient safety and delivering patient-centred care. The proposed legislation should reflect these principles and ensure that it does not unintentionally contribute to any existing 'blame-culture' within health and social care settings. Systems should be in place within these settings to ensure improvements are driven forward when genuine mistakes occur and that staff are comfortable raising concerns.

Further information surrounding the application of the offence should be laid out in secondary legislation and guidance. This should include the list of professions, settings, definitions including:

- what constitutes avoidable and unavoidable harm
- what constitutes wilful neglect, and
- the differences between competence and conduct.

There should also be a clear policy position about where this overlaps with existing offences in statute.

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

Yes No

We agree that the offence of ill-treatment or wilful neglect should apply to all

health and social care settings. However, while we recognise that there are existing offences in statute, we believe this offence should apply irrespective of whether it is in a formal setting or within informal arrangements.

Abuse and neglect can happen in the home, as well as in care or nursing homes, hospices and hospitals. It can involve care workers, family, neighbours, friends or strangers. At home, the people most at risk are those that are vulnerable, elderly, socially isolated or those with a poor relationship with their carer. Extending the offence to include informal settings will help protect human rights of these vulnerable people.

However, we recognise that if informal arrangements are included in the legislation there should also be a framework to ensure that support mechanisms are in place for informal carers. We welcome the Scottish Government's statement of intent¹ to bring forward legislation to support carers and young carers.

We also recognise that unpaid carers play a significant role in the delivery of care and support, enabling older and disabled people to live safely in their own homes and communities. The Scottish Government's Caring Together strategy suggests that around 660,000 people (10% of adults) in Scotland are carers. With a growing ageing population that figure is estimated to increase to 1 million (15% of adults) by 2037.²

Any legislation must ensure that it does not discourage people volunteering as carers.

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 apply to all settings in health and social care, irrespective of the age of the patient.

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

Yes No

The offence of ill-treatment or wilful neglect should apply to all health and social care settings, irrespective of whether it is provided on a voluntary

¹ <http://www.scotland.gov.uk/Publications/2013/10/3416>

² Understanding the barriers to identifying carers of people with advanced illness in primary care: Triangulating three data sources. E. Carduff, A. Finucane, M. Kendall, A. Jarvis, N. Harrison, S.A. Murray

basis or on behalf of a voluntary organisation.

However, we recognise that if voluntary arrangements are included in the legislation there should also be a framework to ensure that support mechanisms are in place. As above we would like to ensure that any legislation must ensure that it does not discourage people volunteering as carers.

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

We agree that the offence should concentrate on the conduct of the individual or organisation providing care, rather than any harm suffered as a result. We agree that this should align with the offences in the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2000.

Different people subject to the same conduct may be affected in different ways and have very different outcomes. Applying a sanction only when serious harm occurs allows scope for continued future mistreatment which may result in serious harm.

Consistency is key in ensuring the legislation is robust, transparent and accountable. Setting a threshold based on harm introduces inconsistency.

However, we recommend that there should also be a clear framework and investigation policy laid out in secondary legislation and guidance.

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

Yes No

We agree that the offence should apply to organisations as well as individuals. This will enable the offence to be consistently applied across health and social care settings.

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

Yes No

It is important that individual and organisational responsibilities are equally considered when allegations of any offence are being investigated. Notwithstanding other areas, aspects such as organisational arrangements, structures and commissioning may lead to ill-treatment and neglect.

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

We agree that the penalties for this offence should reflect existing penalties for similar offences, as detailed in the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2000.

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

No Comment

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?

We welcome the Scottish Government's commitment to undertake an Equality Impact Assessment (EQIA). The proposed offence may have positive equality impacts for age and disability.