



**The Self Directed Support
Scotland response to the
Scottish Government
Consultation:**

Proposals for an Offence of Wilful
Neglect or Ill-treatment in Health
and Social Care Settings.

December 2014

Self Directed Support Scotland (SDSS) is a national membership organisation which actively promotes Independent Living by supporting, working with, and championing the aims of self-directed support Disabled People's Organisations.

SDSS develop resources, material and training for their member organisations and regularly deliver presentations which show that the social model is at the heart of self-directed support and independent living. SDSS also work with local authorities, voluntary sector organisations, NHS health boards, universities and colleges to influence and guide the implementation of the Social Model within their own policies and programmes.

Tha Taic Fèin-Treòraichte Alba (SDSS) na charthannas a tha a' brosnachadh chiorramach a bhith neo-eisimeileach le taic agus co-obrachadh an com-pàirt le buidhnean chiorramach. Tha sinn ag obair le ciorramaich a' toirt dhaibh cuideachadh gus buidhnean a chruthachadh a bhios fo an stiùir fèin.

www.sdsscotland.org.uk

We hope this response proves useful in informing the deliberations of the Scottish Government and Parliament on proposals for an offence of wilful neglect or ill-treatment in health and social care settings. It draws on evidence gathered from SDSS member organisations and the lived experience of disabled people in receipt of social care and support in Scotland. SDSS was the co-convenor of the Scottish Government working group advising on minimising and preventing risk in relation to disabled people employing personal assistants (PAs).

SDSS believes that the PA profession should not be covered by the proposed offence. The rest of our response to the consultation is based on this premise.

Independent living:

Disabled People have defined independent living as:

“disabled people of all ages having the same freedom, choice, dignity and control as other citizens at home, at work and in the community. It does not mean living by yourself or fending for yourself. It means rights to practical assistance and support to participate in society and live an ordinary life”.

Independent living is about more than having control and choice for the purpose of self-management of your condition. This definition has been endorsed in the ‘Vision for Independent Living’ by the Cabinet Secretary for Health for Scottish Government, COSLA, the NHS in Scotland and the Scottish Independent Living Coalition¹.

Introduction

For those people who use it – including disabled people – social care and support is an example of the essential practical assistance and support needed to participate in society and lead an ordinary life (see the definition of independent living above). Without such support, disabled people and other social care users cannot enjoy their human rights on an equal basis to non-disabled people. As such, social care is an essential infrastructure for the equality and human rights of disabled people and others who use social care and support.

¹ <http://www.scotland.gov.uk/Publications/2013/04/8699>

Disabled people welcomed the Social Care (Self-directed Support) (Scotland) Act 2013 (the Act) which recognises the rights of disabled people to care and support. The Act was a coproduction between Scottish Government, partner organisations and disabled people. SDSS believes any basis to change legislation on care and support must consider the rights and freedoms of disabled people and these can only be secured through co-production with disabled people.

We believe that the creation of an offence of wilful harm or ill treatment should be solely in response to specific instances in care and support institutions². The proposed offence should not be extended to care and support provided by a PA for a service user or their family. The reason for this is the unique nature of the contractual relationship between a PA employer and his/her PA(s).

PA employment and the balance of risk and choice:

When employing a PA, the employer is the supported individual, their parent, or carer of the supported person. The responsibility to not let wilful neglect or ill-treatment happen is taken by the employer which in most cases will be the supported person, their parents or carers. Within this unique set up, risk and risk enablement should be approached completely differently from the way it is approached by regulated care providers.

Most service users choose the PA employment option because this enables them to have maximum choice and control over their support. PA employment also gives them the opportunity to assert their need for support rather than for protection. In this unique situation they can develop a code of practice with their staff that is relevant and tailored to employer and employee. As such the PA is constantly and directly guided by the supported person/employer, greatly minimising a chance of wilful neglect or ill –treatment. However, if any of this took place the employer has the tools to reprimand the PA and address the situation through employment law.

² <http://www.independent.co.uk/news/uk/crime/winterbourne-view-scandal-call-for-new-care-home-neglect-law-8230862.html>

Differences with regulated care provision

Unlike the relationship between regulator, regulated support agency/worker and the supported person, the direct relationship between an employer and their PA(s) means that standards of care are defined by the supported person, their parent or carer employing the PA(s). Subsequently, care compliance, maintenance, evidence, benchmarking, scrutiny, accountability and safety should also be defined by the PA employer.

Children and Young People

In our response to the then Children and Young People (Scotland) Bill 2014, SDSS stated the need for proportionate safeguards. Again we believe that the PA profession should not be covered by the offence.

Volunteer arrangements for Care and Support

As soon as care or treatment is provided by a volunteer on behalf of a voluntary organisation, it moves care and treatment in a triangular relationship between the supported person, the organisation and the individual carer. This triangular relationship can only increase the risks for wilful neglect or ill treatment. We therefore would agree that the offence should apply to people who are providing care or treatment on a voluntary basis on behalf of a voluntary organisation, whether on a paid or unpaid basis

Comparison of the proposed offence to the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adult with Incapacity (Scotland) Act 2000

SDSS agrees with the Scottish Government that as in the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adult with Incapacity (Scotland) Act 2000 the offence should concentrate on the harm inflicted on the individual.

Organisational inclusion in the offense

Outside the profession of PA employment (directly managed by the supported person, their parents or carer) - SDSS believes the offence should apply to organisations as well as individuals – although in the case of an individual, it would have to be established how much the offence is due to organisational pressure and why/how much the individual colluded with the organisation.

Ends

James Blair

Policy (Personalisation and SDS Coordinator)

Self Directed Support Scotland

01315164196 james@sdsscotland.org.uk