

## SIAA Response

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

22<sup>nd</sup> December 2014

### **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?**

Yes. The new offence of ill-treatment or wilful neglect should apply to all formal health and social care settings in the public or private sector. Those who need to use health or adult social care should expect the same standards of care irrespective of the setting in which it is provided. Individuals or organisations should be held to account for ill-treatment or wilful neglect when they are providing health or social care either in the private or public sector.

Independent advocacy organisations report having supported people who have been ill-treated or neglected by services. We believe that there is a need to ensure access to independent advocacy for people who may be or have been victims of ill-treatment or wilful neglect. Having access to independent advocacy will help to ensure that people are supported to understand their rights are and supported to take action if these rights are not upheld.

### **CASE STUDY**

***Sam lives in his own home and receives support from a care provider. His care package includes visits from the care provider three times a day. Prompting Sam to take his medication is one of the reasons for the visit.***

***Sam's brother became concerned on visiting him some evenings that Sam appeared to be over-medicated and unable to stay awake. Sam's brother set up a webcam to film support providers and found that one of them had been giving Sam a double dose of his medication to avoid carrying out the third visit. The film was handed to the Care Inspectorate who investigated. Their conclusion was that this only evidenced that the doubling of medication had occurred once but they did uphold the complaint and directed the support provider to make improvements to meet expected standards. Sam's brother felt that although the complaint was upheld, the measures taken were not adequate enough given the actions taken by the support worker.***

**2. Do you agree with our proposal that the offence should not cover informal arrangements, for example, one family member (generally termed unpaid carer, or carer) caring for another?**

No. The offence of ill-treatment or wilful neglect should apply irrespective of whether the ill-treatment or wilful neglect occurs in formal health and social care settings or informal situations.

**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. The new offence should apply to all children's social care services in the same way that applies to adult social care services.

**4. Should the offence 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?**

The offence should apply to all people who are providing care or treatment whether that be on a voluntary basis and paid or unpaid. Organisations providing care or treatment have a responsibility to ensure that everyone employed, in a paid or unpaid capacity has appropriate training and proper structures of supervision and support as well as employee monitoring should be in place.

It is also important that service users have the same rights of redress as those who use statutory or private sector support and services.

**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. The offence should concentrate on the act of wilful neglect or ill-treating regardless of whether any harm was suffered as a result. It will however be important also not to lose sight of the harm caused to victims of ill-treatment or wilful neglect.

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

Yes the offence should apply to both the organisation as well as the individual.

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

The offence should apply when organisations have failed to take reasonable action to prevent cases of ill treatment or wilful neglect, where organisations have failed to provide proper training and support & supervision or where organisations, having discovered such a case, fails to take immediate action to prevent any further harm.

**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?**

Making an offence of wilful neglect and ill treatment means that there is consistency and accountability in service provision that will benefit **all** people. Neglect is identified as an aspect of child abuse and also elder abuse. Some people from protected characteristics groups, due to a combination of their characteristic, circumstances, situation or disability will be more vulnerable to neglect or ill treatment. They may in fact be seen as potential targets for abusers. It is important therefore to be aware of and sensitive to individual needs.

Access to independent advocacy for those who are or may be victims of wilful neglect or ill treatment will help to ensure that all actual or potential victims are appropriately supported throughout an investigation.

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The Scottish Independent Advocacy Alliance (SIAA) is Scotland's national membership body for advocacy organisations. The SIAA promotes, supports and defends independent advocacy in Scotland. It aims to ensure that independent advocacy is available to any person who needs it in Scotland.

SIAA is a Scottish Charitable Incorporated Organisation Charity number SC033576 –

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