

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

Quarriers believes that this legislation to should apply to all health and adult social care settings irrespective of whether they are in the public or private sector. The individual must be at the heart of all health and social care settings and wherever this support is received it is paramount that the same standards of care and laws should apply - equally the same penalties must exist when conduct fails to adhere to these.

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

Yes No

Quarriers feels that for the full potential of this legislation to be realised it should apply across the board including situations where care is not being provided on a contractual basis. Increasingly, people are likely to receive a mixed package of provision where part of their care is provided by family members (often informal and unpaid) while other elements are provided by paid carers. We believe that if this legislation does not to apply to informal care arrangements it could create an unnecessary legal anomaly and cause a degree of uncertainty from paid staff who may have concerns about family members' conduct. There have also been a number of high profile incidents of family members' neglect and ill-treatment of very vulnerable people in their care. We are not convinced there is a strong argument why this legislation should not protect individuals in these circumstances. We, therefore, think that this legislation should be applied comprehensively across all care settings whether of a formal or informal nature.

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

We believe this legislation should be applied comprehensively across all care settings including children's services.

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

Yes No

We believe this legislation should be applied comprehensively across all care settings including on a voluntary basis and regardless of whether the care is paid or unpaid.

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

Quarriers agrees that the new offence should concentrate on the act of wilfully neglecting, or ill-treating an individual but would caution that determining whether an act is wilful or not may prove difficult in some cases. Our experience is that particularly where neglect is of an emotional nature establishing the wilful aspect of this behaviour can be challenging. This is especially true if an individual has a lack of capacity or has difficulty communicating verbally. However, we think that the approach will be particularly useful where there has been a pervasive culture of neglect or collusion in the ill-treatment of multiple people in a care setting.

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

Yes No

Quarriers believes that the offence should apply to organisations as well as individuals but not necessarily in every circumstance. A clear distinction must be made between incidents where an offence has been committed solely due to the actions of individual and situations where an organisation's action or lack of action contributed to the offence. Where an organisation can be shown to be complicit in the offence it should also be held responsible e.g. if the organisation has failed to act appropriately on an incident it was aware of, if appropriate policies or procedures were not in place or where a culture was allowed to exist which led to wilful neglect or ill-treatment of individuals. In large organisations, however, isolated incidents which result from the actions of an individual will undoubtedly occur. It would be wrong for organisations to be required to share responsibility for these actions where it can be shown that they had taken all reasonable steps to prevent such an occurrence. We think that standards of conduct to

which organisations can be held to under this legislation should be aligned with existing standards and processes already established by the Care Inspectorate.

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

See above

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 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.

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

We propose that a restorative justice element could be applied to organisations whereby they must demonstrate what they have learned and how they have changed their practices as a result.

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 legislation could pose difficulties for individuals who lack of capacity or are unable to communicate verbally in terms of establishing the burden of proof against a perpetrator of neglect or ill-treatment.