

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

I believe the new offence should cover formal care settings in both the private and public sector.

Neglect or acts of Omission is a challenge in care homes nationally, hence its inclusion as a previous national priority. Adding this as an offence will assist by driving up standards of care in these settings. It gives us powers beyond large scale inquiry to prosecute care home owners or agencies, who continue to fail through poor leadership and cultures of poor practice.

However neglect doesn't only occur in care home settings, it can occur in local authority care or health settings. Therefore It should apply to health and social care services particularly as integration brings services together.

The Proposal covers care at home services including care delivered through third sector care arrangements. However with the implementation of SDS thought should be given as to how this will work, where the client is using local authority monies to contract and purchase in their own care.

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

Yes No

I do not support including informal carers or family members in this process. Many carers continue to care for their loved one through a sense of family or duty. Where neglect did occur, we risk criminalising the carer, which may be the last piece of pressure and stress, resulting in them refusing to care for their loved one. This may put a huge additional strain on resources and services.

Where neglect occurs in carer arrangements. There are already procedures through the social care and health duty system or through Adult Support and Protection to address issues of neglect which come to our attention.

It would be relevant to include carers employed under SDS. They have a contract of employment and therefore are legally obliged under their contract to provide a level of care and support and if this is not forthcoming then it may not be adequate to address through employment law. If carers employed through SDS are not included this would lead to lower levels of protection/redress for those arranging their own care.

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 cover social care services for children including fieldwork and residential staff.

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

Yes No

Yes - Where there is a contract in place to provide care and support.

Further clarity around the wording –“on behalf of a voluntary organisation” would be helpful.

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

Often in busy task driven care settings, a culture has developed, and although it can be difficult to prove the carer is actively neglecting the adult, when we move away from person centred approaches to task driven approaches, good practice can start to slide and poor cultures can develop.

I don’t think we can wait till after the harm has occurred. The key is care standards, leadership, regular access to training, supervision, and a clear feedback and complaints process with prompt and adequate responses.

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

Yes No

So often in care settings when concerns are raised about an individual, there are wider failings and a culture in that organisation. It is important not to assume that the neglect is solely due to the actions of one individual.

Through our large scale inquiry process, we regularly see the same care providing organisation enter and exit the large scale inquiry process. These persistent cases continue to have the same recurring themes. Lack of management or leadership, low staff morale, low access and uptake of training, often leading to a culture of

poor care. Staff themselves may not receive support from their organisation. This is clearly the responsibility of the senior managers or owners of the care home or care at home service to address. Where harm is wider than any one individual and there is a culture of poor care, we should seek to avoid blaming an individual and seek to address the broader themes and issues.

"Wilful neglect" should be clearly defined however otherwise "wilfulness" may be hard to prove. The definition could be linked to (but not defined by) the national care standards.

Clear links to the Care Inspection process would need to be developed with information sharing between the Inspection process and Contract Monitoring processes in order to obtain a full picture of incidents and concerns relating to all aspects of failed duty of care.

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

Yes No

1. Where there are patterns of inadequate nutrition, fluids, heat, privacy, access to social activity, cleanliness, attention to personal hygiene.
2. Where inadequate attention is given to clear medical need.
3. Where restraint or manual handling practices are used inappropriately or unlawfully
4. Where service users' calls for help or evidence of distress are not responded to or are responded to in an aggressive or punitive manner.
5. Where any failure in the service including inadequate training, low staffing levels or poor care practices which have the potential to cause harm or have caused harm which are brought to the attention of adult support and protection services, Police Scotland and/or the Care Inspectorate and are not addressed within a reasonable period.
6. Where breaches in basic care standards have the potential to cause or have caused significant harm.
7. Where there is evidence that the organisation has breached its duty of care through lack of appropriate systems to evaluate and monitor care being provided.
8. Where there is evidence of an inadequate approach to safe care at all levels within the organisation.
9. Where complaints have been received and no appropriate action has been instigated to prevent recurrence of the issues raised.
10. Where governance arrangements within the organisation do not address issues of neglect immediately and comprehensively, looking at a whole system response to such issues. This could apply to any level within the organisation including senior managers who have a significant role in decision making about how the care is managed and organised.

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

Yes in general there is also a compelling argument to have individuals barred from owning, managing, and working in or having an association with care organisations in the future.

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

A “publicity order” making the concerns public (as is within legislation in England).

In respect to organisations courts should be given greater discretion according to the circumstances of each case. For example a large organisation successfully prosecuted and having been found to have made significant profits through the provision of services should be subject to far greater financial penalties than the £10000 available under section 315 of the Mental Health Act.

However any fines imposed should be balanced with the need for the organisation to continue to provide a quality service to those in receipt of their care.

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?

There is a concern that some ethnic communities may prefer to care for relatives at home by family members and may therefore not have access to the same protection and redress should informal carers not be included in the proposed legislation.

In general the proposed legislation could be seen as a positive development to provide a level of protection to vulnerable people not currently covered by other mental health legislation.