

**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 warmly welcome the Scottish Government's proposal for a new offence of wilful neglect or mistreatment and strongly agree that this offence should cover all formal public and private health and social care settings in which care is provided.

We welcome the Scottish Government's programme of integration of adult health and social care services and agree that a new offence based on an overarching definition of substandard care, applicable in a range of care settings, is both appropriate and necessary in light of this integration.

**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 it is inappropriate for the new offence to cover informal arrangements. We believe that the inclusion of informal arrangements which are not underpinned by a legal obligation or contract would result in complex enforcement issues and would therefore reduce clarity and certainty about the offence and dilute its impact.

However we strongly believe that all individuals should be protected from wilful neglect or mistreatment, regardless of the setting or context in which their care is provided. Therefore we urge the Scottish Government to consider providing additional clarity on offences in statute that already exist in informal care settings alongside information about the new offence.

**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 agree that the new offence should cover social care services for children. As outlined in our response to question 1, we believe the offence should be founded on an overarching concept of care applicable across all health and social care settings, and therefore we do not believe there is any rationale for excluding children's social care services.

Children, as well as adults, are at risk of ill-treatment or neglect when in the care of health or social care professionals, and indeed in many cases they may be more vulnerable. Therefore we do not believe that any formal children's services should be excluded, regardless of the setting in which care is provided.

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

Yes  No

As highlighted in our response to question 2, we believe the offence should apply in all formal situations of care provision in which it can be enforced without creating undue risk of uncertainty or lack of clarity.

We believe therefore that the question of applicability to voluntary settings is first and foremost a legal question of enforceability in this setting. We do not have sufficient knowledge of the legal or contractual basis upon which voluntary health and social care services are provided in Scotland in different situations and therefore we cannot answer this question.

**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 new offence should concentrate in the first instance on conduct rather than outcomes and that this will reduce uncertainty about its applicability and therefore lower the risk of inconsistencies in prosecution decisions.

However, whilst we agree that a threshold of harm is unhelpful in determining whether an offence has occurred, we believe it should be one consideration in the determination of penalties when an offence has occurred. We believe this would further strengthen the impact of the proposed new offence. Acts of wilful neglect or mistreatment are often interwoven with subsequent physical or emotional harm suffered by the recipients and as such, we would welcome more clarification from the Scottish Government concerning the process for setting penalties for those found guilty of the offence.

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

Yes  No

As highlighted in our responses to questions 2 and 4, we believe the offence should apply in all formal situations of care provision in which it can be enforced without creating undue risk of uncertainty or lack of clarity. As with voluntary settings, we believe therefore that the question of applicability to organisations is first and foremost a legal question of enforceability in this setting. As such, our response to this question is yes, in principle, with the caveat that applicability is a question of

enforceability.

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

Yes  No

In principle (please see our response to question 6), we believe the offence should be applied to any organisation in which a culture of substandard care is endemic and is provided collectively rather than by particular individuals in isolation. We also believe in principle it would be appropriate to apply the offence to an organisation in which the processes, procedures and systems for care provision are inadequate or in which substandard care is routinely provided in a discriminatory way across patient groups in breach of the Equalities Act.

**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 do not have a view on this issue. However, as highlighted in our response to question 5, we believe penalty setting should take into account the harm caused to patients as a result of the wilful neglect or mistreatment.

**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 believe courts should also have powers to determine whether the Chief Executive, particular Board members or the Board collectively are liable for the organisation's offence and if so, to order their dismissal and replacement.

**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 do not believe the proposed changes will necessarily advantage or disadvantage any particular groups although we recognise that it is possible that some vulnerable groups may be more likely to be victims of the new offence than others.

Therefore we encourage the Scottish Government to ensure that information about the new offence is disseminated as widely as possible to all groups, particularly

those who are typically underrepresented, whose voices are seldom-heard or who may be more likely suffer mistreatment or neglect, to ensure that all individuals have knowledge of their rights to adequate care and are supported to raise issues where these occur.