

**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 welcome the proposal on the new offence of wilful neglect or ill treatment in both private and public sector. This provides a level of protection to people who are not covered by section 315 of the Mental Health Care and Treatment Scotland Act.

Clarity is needed around how the proposed legislation would apply to personal assistants sourced by people in receipt of self directed support and private child minders

The proposed legislation provides the opportunity of prosecution of the organisations and/or their managers where neglect is endemic/systemic.

This legislation should cross reference the Adult Support and Protection

Scotland Act 2007. In all likelihood any adult receiving care services where there is neglect is very probable to be an adult at risk of harm as defined by the 2007 Act.

**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 with the proposal that the offence does not cover informal arrangements.

We feel that existing legislation such as the Adult Support & Protection Scotland Act 2007 and/or Edinburgh and Lothian Inter-Agency Child Protection Procedures (2012) / Scottish Government National Guidance for Child Protection 2014 is sufficient and would lead to the possibility of any criminal investigation.

**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 with the proposal that the offence should cover social care services for children. Although there is current legislation covering this we welcome the opportunity for this to be reviewed and updated.

We are of the view that the following should be excluded:

- One-to-one direct care, kinship care and foster carers as there is sufficient legal provision in place to protect children within such circumstance.

We are of the view that the following should be included in the proposal:

- Broader services for children and young people such as residential care, residential schools, young person's unit (health facilities), private nurseries and health provision for children such as hospital care/hospice care, mental health services etc.

The proposed legislation provides the opportunity of prosecution of the organisations and/or their managers where neglect is endemic /systemic

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

Yes  No

It is our view that the offence should apply to voluntary organisations as they have accountability to ensure that all relevant checks are undertaken and staff and volunteers are appropriately trained and resourced.

The offence should not apply to the individual unpaid volunteer.

Clarity is needed around a 'paid volunteer' as the definition of a volunteer is classed as 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

We agree the proposal should concentrate on the act of wilfully neglecting or ill treating an individual rather than the harm experienced as it changes the focus from the harm caused to the process, conduct and culture that may exist within organisations.

The new Statutory Duty of Candour will focus on instances of harm to individuals

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

Yes  No

Yes as it changes the focus from the harm caused and includes conduct and culture that may exist within organisations.

Examples of this could include:

- ensuring all staff receive and implement manual handling training within care homes,
- poor management and leadership within organisations which can lead to poor practice and could result in wilful neglect by the organisation and its managers but unintentional harm by individual care staff.

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

Yes  No

It should apply when there is regular systematic and endemic failures within the organisation.

Examples of this could include:

- Poor professional standards of practice and concerns re professional conduct
- Poor leadership and management
- Limited policies and procedures and poor implementation
- Unexplained or concerning behaviour of carers
- Hostile/rejecting behaviour by the carer
- Misuse or drug errors with medication
- Withholding/obstructing medical treatment
- Limited knowledge and lack of understanding of symptoms that would indicate the need for medical attention
- Evidence of poor infection control practices, poor manual handling practices and evidence of poor nursing practice
- Evidence of systemic institutional cultures
- Prolonged period between illness/injury and seeking medical attention
- Disregard for effective disclosure checks
- Evidence of lack of intervention to intervene and protect
- Ineffective systems for monitoring falls
- Failure to meet appropriately and adequately an individual's medical, physical or psychological and/or emotional care needs when expected to do so
- Failure to provide access to appropriate health, social care or educational/employment services
- Withholding the necessities of life such as medication (with the exception of end of life care), adequate nutrition or heating
- An individual's conduct which causes persons to self harm
- Failure to deliver an acceptable standard of care

**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 are in agreement with the existing penalties for this offence as consistent with the Mental Health Care & Treatment (Scotland) Act 2003 and 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 X No

We think greater corporate responsibility should lie with the organisation when there is sufficient evidence to suggest that wilful neglect is the result of poor organisational policy, procedure, processes, practice training, training for staff. Currently this lies with the responsibility of the managers of organisations and not the actual board of directors/council. Additional penalty options for organisations such as service scrutiny penalties (additional external monitoring for a defined period of time) and not additional contractual bids for new monies will be accepted for a fixed period of time.

We suggest that the Care Inspectorate could have a larger role in monitoring parent organisations and liaising with their counterparts across the UK (Care Quality Commission) for organisations whose parent companies are in England and Wales.

**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?**

Opportunities for better training and holding organisations accountable for their implementation of the equalities legislation to encompass the protected characteristics and the understanding of the particular harm caused in failing to deliver services appropriately.

We believe that the proposal provides an opportunity to organisation through equality considerations to reconfirm the expectations and training for staff including whistle blowing policies. Enabling and empowering staff to report where neglectful practices are/ or have the potential to occur.