

**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 X

We agree that the proposed legislation should apply to both Health and Social Care and Children and Families working across the range of settings as these sectors provide care and support at a time and in situations when individuals are at their most vulnerable and therefore require consistently high standards of care.

We support the proposal that social care and nursing agencies be included as it would be inconsistent for this particular section of the workforce to be exempt from scrutiny of this kind. We strongly agree that care provided in the person's own home should be included.

We believe there should be expansion of the areas listed in Appendix A, to include in particular Self Directed Support provision. We suggest therefore that the definition is not merely a list of professionals but should also state **"and where there is a contractual arrangement to provide care or support"**.

We believe the offence should cover all contractual arrangements and this includes where individuals are employed as Personal Assistants under a Direct Payment. The provision of a direct payment in lieu of a service and the employment of a personal assistant are contractual arrangements and therefore should be subject to this legislation. We appreciate that in some circumstances and areas this may include family members

Supported employment situations should also be included.

It is also essential to establish the boundaries of responsibility between employers, professional regulatory bodies and the police. Clarification is needed on whether the proposed legislation takes precedence over the Regulation of Care Act and other similar legislation. Aspects of SSSC activity in investigating misconduct impacts on employment law, employers' responsibility to their employees and service user confidentiality.

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

Yes X

Whilst most family members and informal carers attend to their relatives to the best of their ability, we acknowledge that there are certain rare situations where individuals deliberately neglect and mistreat dependent family members. Whilst we accept that these individuals should be dealt with appropriately, we are concerned that to include situations where family members who are providing informal care are investigated for wilful neglect may lead to increased risks of information being withheld. This is because people may be reluctant to report situations of (unintended) harm for fear of prosecution. Where an adult is identified as being at risk of harm as a result of a stressful caring situation, support

and protection is provided under the Adult Support and Protection (Scotland) 2007 Act.

**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 are of the view that the proposed legislation should also apply across 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 agree the new offence should apply to people providing care or treatment on a voluntary basis on behalf of a voluntary organisation, whether paid or unpaid. To exclude voluntary provision would be inconsistent if the primary purpose of the new offence is to protect all vulnerable individuals in receipt of care and treatment. The protection of the most vulnerable in society is a universal responsibility and as such formal and informal provision of care provided by voluntary organisations should be subject to the same levels of scrutiny.

**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 with the proposal that the new offence should focus on the conduct of individuals and organisations, rather than the outcome of the action or inaction. This may allow for prevention of harm and provide early warning signs (early indicators of concern) before the harmful practice or conduct seriously impacts on the health, welfare and/or wellbeing of individuals. We would however wish to emphasise the importance and need for clear unambiguous guidance to be issued within the codes of practice which stipulates the level of evidence required and how this would be measured.

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

Yes  No

The proposed offence should also apply to organisations for the following reasons;

Experience and evidence indicates that organisations can create organisational cultures

which allow and in some cases facilitate abuse, mistreatment and neglect. This can be as a result of inadequate policies and procedures, training and professional development, models of supervision, recruitment and incident and accident reporting mechanisms.

Failure to address complaints or whistle blowing disclosures and, in some notable cases actually ignoring or silencing staff who raise concerns or highlight examples of unprofessional practice and/or conduct. Such cultural practices should also be addressed strongly and effectively through legislation.

If the new offence were to apply to senior managers of public services it should also apply to Board members of voluntary organisations.

However we agree that poor standards do not necessarily equate to deliberate neglect as factors such as waiting lists (related to inadequate resources) may contribute. The potential for misconceived private prosecutions is a concern.

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

Yes  No

The offence should apply where there is evidence that the organisation put profit before quality of care; where it had not provided adequate management or staffing levels or access to relevant training or appropriate equipment; where the agency ignored or attempted to conceal concerns raised by staff or where there is evidence of coercion or intimidation. Where a duty of care exists, organisations should be able to evidence their values/codes of conduct/culture and act accordingly.

**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

**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 agree that to facilitate a consistent approach the same penalties as currently exist in similar legislation should apply. However, it may be helpful to review and examine whether these penalties are effective in deterring perpetrators.

With regard to organisations, it seems disproportionate to impose prison terms for individuals and only impose fines on organisations. Fining organisations could potentially penalise users of services more than organisations.

If individual managers, Directors or Board Members are found to have failed to address neglect or mistreatment, or deliberately conceal it, they should be subject to the same penalties as the individual perpetrators of neglect.

Fines should be imposed where it can be demonstrated that it will not impact on users of services.

Where it is evidenced to be the fault of the organisation, consideration could be given to mistreated users being financially compensated by the organisation.

Where it is evidenced to be the fault of the organisation and the offence is considered to be extremely grave, independent sector organisations should be banned from providing health and social care services to vulnerable people. Under the same circumstances, local authorities should be externally reviewed and reorganisation imposed if significant failings have been identified.

**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?**

Gathering of evidence, witness statements and or the burden of proof should cases proceed to court, have implications for people who fall into the categories as outlined by the protected characteristics. Ensuring consistency in relation to formal and informal care arrangements is therefore a key consideration of the legislation.

Harmful traditional practices, cultural norms and expectations may also have a bearing on the ability to pursue such a prosecution due to lack of evidence or corroboration.