

**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

Victim Support Scotland notes that the purpose of the new offence would be to widen the scope of existing legislation relating to the neglect and mistreatment of those in care from covering only adults with incapacity and mental health patients to all individuals who are cared for in a health or social care setting. We welcome the recognition that individuals who require such care should all benefit from the same legislative power in relation to the investigation and prosecution of crimes against them, irrespective of their mental health or capacity. Individuals who are looked after in a health and social care setting can be particularly vulnerable to harm, and are less likely to report any harm suffered due to fear or lack of capacity to do so. Although such behaviour is uncommon, it is essential that the impact of this is recognised and that adequate provisions are in place to ensure that individuals who have abused the trust placed in them to care for another person can be made accountable for their behaviour, irrespective of whether the care is provided within the public or private sector.

We believe that a new offence would convey a clear message to those who have power over the health and wellbeing of individuals in care that neglect and mistreatment is unacceptable and results in serious consequences. It is hoped that such a message would act as a deterrent to those who hold such power.

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

Yes  No

VSS believes that current legislation is sufficient to enable the investigation and prosecution of individuals who harm, neglect or ill-treat those in their care when informal arrangements are in place.

We welcome the possibility of increased support for unpaid carers through proposed carer legislation<sup>1</sup>, recognising that such support may have a role to play in the prevention or identification of mistreatment by carers in private settings.

**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

It is the view of Victim Support Scotland that all care services should be covered by the offence, including those provided to children. The principle of the legislation is

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<sup>1</sup> The Scottish Government (2014), 'Carers Legislation – Consultation on Proposals', <http://www.scotland.gov.uk/Resource/0044/00442248.pdf>

to ensure that sanctions are in place for those who deliberately neglect or mistreat individuals in their care; VSS believes that this principle should be applied across the board, irrespective of the age, mental capacity or health of the beneficiary of that care.

We do not have enough confidence in this area to advise on which children's services, if any, should be considered for exclusion from the offence.

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

Yes  No

Victim Support Scotland recognises the contribution of voluntary organisations to care provision within Scotland, with many services carried out by individuals working within both paid and unpaid capacities. We therefore believe that the offence should apply to voluntary organisations and individuals as well as those who are paid for the work they do in this field. Legal contracts and obligations are in place for voluntary workers and organisations, just as they are for paid providers of services.

**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 believe that the new offence should be consistent with existing legislation in that the offence should concentrate on the act of wilfully neglecting or ill-treating an individual rather than the harm suffered as a result. However, the harm caused to the victim should be recognised at a later stage within the criminal justice system. Currently, victim representations to the court on the impact of the crime are restricted to written statements in solemn cases. Victim Support Scotland believes that *all* victims should be afforded the opportunity to present (orally and/or in writing) the physical, emotional and financial impact of the crime. Regardless of the outcome of the case, the opportunity and process of telling the court what impact the crime has had on them can be an extremely helpful and cathartic one for many victims. Few victims are required to testify in court and, even for those who are called to testify, victim impact statements are frequently the victims' only real opportunity to 'participate' and to have their voice heard in the criminal justice process. Many victims report that making such statements improves their satisfaction with the criminal justice process and helps them recover from the crime.

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

Yes  No

Taking forward the principle that the new offence would broaden the scope of the offences under existing legislation, VSS believes that the offence should apply to organisations as well as to individuals. This would be consistent with the current provisions of section 315 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

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

When appropriate, organisations should be held accountable for the quality of the services they provide. When applying the offence to an organisation, consideration should be given to whether the organisation had knowledge of, encouraged, facilitated or ignored the wilful neglect or ill-treatment of the person under their 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

In addition to imprisonment and fines, VSS believes that it would be appropriate for the courts to have compensation orders as an additional penalty option in respect of both individuals and organisations. Any compensation ordered should be paid upfront by the State to the victim, with the State responsible for pursuing payment from the offender without the need to involve the victim. This would ensure that the victim, if willing, would receive some reparation for the harm that has been caused to them direct from the offender.

**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

Please see our answer to the previous question.

**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?**

VSS believes the proposed changes would benefit all individuals in care; this would include children; older people; individuals receiving care in relation to gender reassignment; and women who are receiving health care for pregnancy and maternity, among others.