

**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

East Renfrewshire Child Protection and Adult Protection Committees agree with this proposal. It is essential that the responsibility of care goes across all service provision including the third sector. We agree that in all formal settings organisations should be held to account where there is ill-treatment or wilful neglect.

It is worth commenting that those attending the focus group to discuss the consultation paper noted that these changes, which potentially substantially raise the accountability factor, are happening at a time when there is greater austerity affecting services. It was thought that this consultation document should be the start of further consultation before any final decisions are taken.

While the list provided in Annexe A is noted as not being exhaustive it is considered that it would be better that the Act applied to all those carrying out a caring role in a health and social care setting should be covered rather than have a specific group designated 'professionals'. As an example occupational therapy assistants are not specifically mentioned in the list but should be covered.

We would seek further clarity on the term 'formal' and 'setting'. This is particularly relevant in Self Directed Support where care can be commissioned and funded through public funding but managed by an individual in their own home.

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

Yes  No

In principle we agree the offence should not cover informal arrangements as these are non-contractual. We seek clarity on what the term *informal* means and would also want to draw attention to the fact that Self Directed Support (SDS) especially for children is in the main based on informal arrangements and may need further exploration. Wilful Neglect based s such circumstances is currently covered by s12 Children & Young People (Scotland) Act 1937. This may however need amended.

Another area of caring and where informal arrangements can lead to harm and neglect is the use of informal carers by individuals in their own homes, sheltered accommodation such as retirement flats. While it is accepted that the nature of this caring role would be difficult to regulate due to the lack of a formal contract there are significant numbers of informal paid carers

'employed' by vulnerable individuals e.g. cleaners and those paid to do shopping or other tasks which enable people to live independently without recourse to public funds. These unregulated, non-contracted workers may also be known to health and social care services as being part of an overall, albeit informal package, of care but the quality of the service they offer is not monitored. Therefore, while some deliberate harm they cause might be covered under criminality or other legislation such as ASPA it would be useful if this area could be considered even if as a sub-section to add weight to the nature of any such offence under other legislation.

**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 seems fitting that a child or young person receives the same level of service regardless of provider. The ability to prosecute ill-treatment or neglect by organisations will not only protect children but also their human rights. Issues of unintended consequence, accidental harm or inadequate support need to be discussed to protect both child and carer, and also to avoid issue of scapegoating within organisations. There may be some services that would be excluded, this would only be the case where there is other adequate legislative provision in place.

**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, contractual obligations form part of all service provision whether by voluntary or statutory organisations. We must be confident that every organisation who are responsible for the care or protection of the most vulnerable are equipped to do so, and understand accountability in its function. This should include a set of standards and inclusion in the PVG Scheme.

There requires to be clarity on the term 'on behalf of' a voluntary agency.

**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

Yes, the focus must be on the act of wilful neglect or ill-treatment and the conduct of the provider (or in some cases, the practitioner) rather than any

harm caused. Responses to harm are different, legislation should be consistent.

Some harm as a result of wilful neglect can be difficult to evidence, for example, where neglect has happened in a care home or other care setting and amounts to psychological harm caused by actions from individuals or the organisation or both. While action to support and protect may be possible under other legislation this may not fully resolve the issue and it is important to focus on the wilful actions or omissions by individuals and organisations.

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

Yes  No

It was agreed that the offence should apply to organisations as well as individuals but to all organisations with the full recognition and consideration of unintended consequences and accidental harm. Consideration must be given to wilfulness, unintended consequence and accidental harm. It must also consider thresholds. Investigations need to be very thorough to determine whether criminal liability exists.

The protection offered under ASPA, AWI and the MHCTA generally are applied to individuals rather than organisations however experience under ASPA is that this is not always the case since improvements by the organisation are often also required to ensure the protection of the adults. Context is key here as quite often poor service provision lies behind the poor conduct of any individual e.g. workload, no training, poor support (therefore not wilful). Establishing deliberate intent could be very difficult.

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

Yes  No  N/A

It is thought that the offence should apply to organisations as well as individuals but to all organisations with the full recognition and consideration of unintended consequences. Investigations need to be very thorough to determine whether criminal liability exists.

Some examples of where it is felt that the offence could apply to organisations include:

- Where level of service provision not met (e.g. led to failings)
- Where duty of care not upheld (i.e. contractual agreements such as

- SSSC & NMC whose Codes of Conduct include a duty of care.
- Where wellbeing not understood / delivered upon (statutory responsibilities not met)

**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 but where the offence involves an agency then additional penalties should be available such as barring individuals from owning or managing a care agency for a period of time.

**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

Yes, they should have the right to ensure this would be proportionate. A standard penalty would be too restrictive. Poor practice / inappropriate levels of care are currently established around balance of probability rather than beyond reasonable doubt. This needs to be considered at the time penalty options are discussed at court.

It is also considered that penalties need to be proportionate e.g. not put a charity out of business by imposing a huge fine for an offence which might not be considered worthy of closing them down in regulatory terms.

**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?**

Whilst the proposed changes may offer greater protection and further enhance and strengthen specific areas such as Human Rights, Equality Act etc, the main point is that it will set a minimum operating standard for all organisations, promote collective responsibilities and improve outcomes for those who most need help and support.

It is important to facilitate communication fully for those who have issues with communication, to ensure that their voices are heard in court during prosecutions where at all possible and they have access to justice. In addition, the impact should register that additional alternative preventative

measures need to be considered in situations where it is suspected that criminal prosecution may not be possible due to someone's communication difficulties.