

Ill-treatment or wilful neglect consultation

C/o Mia Snook
Room 2E11 Quarry House
Quarry Hill
Leeds
LS2 7UE

31 March 2014

Dear Ms Snook,

Ill-treatment or wilful neglect consultation

On behalf of the Institute of Chartered Secretaries and Administrators (ICSA), I am pleased to respond to your consultation document regarding the proposed new offence of ill-treatment or wilful neglect in health and social care institutions.

ICSA is the professional body qualifying and supporting corporate governance, risk and compliance professionals in all sectors of the UK economy. Members are educated in a range of topics including finance, HR, company law, administration and governance, which enables them to add value to any organisation.

ICSA has an extensive pedigree in the governance arena, acting as adviser to government and regulators on company law and corporate governance; able to access a variety of applied experience in order to provide pragmatic insights into effective practices across a range of organisations. A number of our members are involved in the health and social care sectors, and all will be familiar with the importance of recruiting and developing strong boards for all types of organisations and their role in setting the culture and values of an organisation. This wealth of expertise and experience has informed our response to this consultation.

While attempts to significantly reduce, and eventually eradicate, acts of neglect or ill-treatment in the health care sector are welcome, it would be futile to believe this could be achieved without addressing underlying system failures. Organisations do not operate within a vacuum, and as such are directed in a way that responds to legal and regulatory stimuli. The complex arena of health and social care provides a plethora of legal and professional standards and requirements that have not always translated into the best interests of the patient in practice. Systems as well as individuals must be addressed if the quality of care is to fundamentally rise to ensure no harm is done.



Consultation questions

1. We propose that the new offence should apply in all formal adult health and social care settings, in both the public and private sectors. Do you agree with this approach?

All patients, regardless of what type of organisation provides their care, should be entitled to a minimum level of care that 'does no harm'. Not every patient will be aware as to whether their care is being provided by a private, voluntary or state sector organisation, but they will expect that the care they receive is of the highest standard. As such, if the new offence is to be introduced of ill-treatment or wilful neglect, it must be applied to all organisations.

2. Should the new offence apply in all formal health settings in both the public and private sector used by children? Please explain your view.

It would appear anomalous that children were not provided the same level of assurance regarding their care as that provided to adults.

3. Should the offence apply in any other settings used by children? Please explain your view.

Where an individual is reliant on a health or care professional to meet their basic needs, it appears appropriate that the professional concerned is covered by the same standard of care and duty to avoid ill-treatment or wilful neglect regardless of the age, or other characteristics, of the recipient of that professional care.

4. We propose that only formal health and social care arrangements should be within the scope of this offence. Do you agree with this approach?

The proposal appears to be sensible and proportionate. There is some benefit to ensuring that family and friends are not unduly put off from offering help and support to individuals when in need. While other laws covering cruelty, neglect and abuse apply in various situations, this should be different to the proposed law concerning ill-treatment and wilful neglect committed by a professional health or care worker.

5. We propose that the new criminal offence should focus entirely on the conduct of the provider/practitioner, rather than any consideration of the harm caused to the victim of the offence. Do you agree with this approach?

By focussing on the action(s) taken and not taken by the professional health or care provider the approach avoids the complications of assessing the level of harm caused. While this has some benefits, it also could give rise to some unduly disproportionate penalties against those found guilty of ill-treatment or wilful neglect. While the new offence rightly attempts to drastically reduce the number of cases of deliberate poor care, it seems an injustice that all actions (and non-actions) should be handed the same penalty.

6. Do you agree that an approach based on the way in which an organisation managed or organised its activities is the best, most effective way to establish the offence in respect of organisations?

While the approach taken in the Corporate Manslaughter and Corporate Homicide Act 2007 may have its detractors, it has been in operation for a number of years and therefore has precedents that can be built upon. To benefit from the precedents established under this Act appears to be a sensible way to proceed.

ICSA appreciates the opportunity to comment on the Department of Health's thinking in developing a new offence of ill-treatment or wilful neglect. I hope that the above comments are useful to the Department in developing thinking on this new offence. Should further information or clarification be required, please do not hesitate to contact me.

Yours sincerely,

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