

## Wilful Neglect Consultation

Dan Curran  
The Quality Unit  
Scottish Government  
GER, St Andrew's House  
Edinburgh  
EH1 3DG

18 December 2014

Dear Mr Curran,

### **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 settings.

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. Many 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 can 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. Do you agree with our proposal that the new offence should cover all formal health and adult social care settings, in both the private and public sectors?**

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 know 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. Do you agree with our proposal that the offence should not cover informal arrangements, for example, one family member (generally termed unpaid carer) caring for another?**

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, these should be different to the proposed law concerning ill-treatment and wilful neglect committed by a professional health or care worker.

**3. 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 of the offence and explain your view.**

It would appear anomalous that children were not given the same level of assurance regarding their care as that provided to adults. 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. Should the offence apply to people who are providing care or treatment on a voluntary basis on behalf of a voluntary organisation, whether on a paid or unpaid basis?**

Placing the person receiving the care at the centre of the proposal to protect their health and safety logically leads to the inclusion of voluntary organisations providing health and care services, and those representing them, within the proposed offence.

All formal organised care, regardless of the form of the organisation, should be included in the proposal. It is recognised that additional training for carers will be required to inform them of the change in legislation, and the proposal may have an adverse impact on volunteers. Robust background checks, and ongoing support and development for volunteer carers should help to counter any possible lack of interest in unpaid positions.

**5. 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?**

By focussing on the action(s) taken and/or 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 subject to the same penalty.

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

As stated previously, individuals alone cannot effect the change desired. Systems and organisations need to be re-calibrated to ensure that working practices, inspection and regulatory oversight all work in concert to improve the standard and quality of health and care services received. It is therefore essential that organisations are included in the proposal as it will be incumbent upon them to instil the appropriate standards of care delivered via training, ongoing development and regular evaluations of the services provided and the people delivering them.

**7. How, and in what circumstances, do you think the offence should apply to 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.

**8. 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?**

The proposal to create a new offence with an attendant penalty regime aligned to that already in place provides an opportunity for clarity and consistency, thereby increasing the chances for awareness of, and compliance with, the new regime.

ICSA appreciates the opportunity to comment on the Scottish Government's thinking in developing a new offence of ill-treatment or wilful neglect. I hope that the above comments are useful to the Government 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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