

# Consultation on Proposals for an Offence of Wilful Neglect or Ill-treatment in Health and Social Care Settings



## RESPONDENT INFORMATION FORM

**Please Note** this form **must** be returned with your response to ensure that we handle your response appropriately

### 1. Name/Organisation

#### Organisation Name

Royal College of Physicians of Edinburgh

**Title** Mr ☐ Ms ☐ Mrs ☐ Miss ☐ Dr ☒ **Please tick as appropriate**

#### Surname

Dwarakanath

#### Forename

A.D.

### 2. Postal Address

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### 3. Permissions - I am responding as...

**Individual**

/

**Group/Organisation**

☐

**Please tick as appropriate**

☒

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

**Please tick as appropriate**

☐ Yes ☐ No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

**Please tick ONE of the following boxes**

**Please tick as appropriate**

✓ Yes ☐ No

Yes, make my response, name and address all available ☐

**or**

Yes, make my response available, but not my name and address ☐

**or**

Yes, make my response and name available, but not my address ☐

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

**Please tick as appropriate**

✓ Yes

☐ No

**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 ☐

The offence of ill-treatment and wilful neglect should cover all formal health and adult social care settings.

There may be mitigating or additional factors to consider related to the health or care setting but these can be considered at a Crown Office and Procurator Fiscal Office, court or sentencing level. To set divisions and exclusions at the act/offence level will inevitably create barriers to the effectiveness of the proposed legislation.

The terms of wilful neglect and ill-treatment might be defined further and consistency in language adopted throughout the consultation document that refers to mistreated and neglected in the Introduction (p. 4).

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

Yes ☒ No ☐

This is a difficult situation. However, if the suggestion is as set out in the proposal, that the offence of wilful neglect and ill-treatment will only apply where a 'contract' is in place, then it keeps the focus of the legislation and resultant offence clear.

In an informal arrangement, other legislation may be invoked. It would remain reasonable to expect a similar level of care ie freedom from ill-treatment and wilful neglect in informal arrangements. The coverage of the proposals should not be interpreted to imply acceptance of a lesser standard of care in a person's home where other statutory provisions already exist.

**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 ☐

The offence should cover social care services for children as it seems illogical to exclude certain groups of victims of the acts of wilfully neglecting, or ill-treating due to their age. The focus of the legislation should be on the quality of care and treatment.

The following services may be considered suitable for inclusion: out of home care, including kinship care where these are subject to contract; residential care and residential schools; psychiatric in-patient units and young offenders institutions and adult prisons, remand where young people may be held.

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

Yes ☒ No ☐

The voluntary sector has a long established role to play in health and care delivery services and in a wide range of settings.

The introduction of this offence would ensure that volunteers or staff under the management of voluntary organisations would have same obligations as those working for the private or public sectors.

If, however, the work is carried out without a legal contact, then to ensure consistency in the proposals the offence should not apply.

**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 ☐

The focus is rightly on the intent not the outcome. The harm, resulting from the behaviour, could be very difficult to assess. For example, the offences perpetrated upon the residents of Winterbourne View included physical and mental abuse. It would be difficult to compare and measure the harm suffered by the victims. However, what can be identified and to some degree compared, is the ill-treatment perpetrated by staff members upon those in their care.

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

Yes ☒ No ☐

Whilst individuals perpetrate the acts of wilful neglect and ill-treatment, the ethos and support offered to employees by an organisation/employer is of significant importance. When incidents of ill-treatment and wilful neglect occur, the possibility of the organisation being held to be in part responsible for the actions should be available as a course of action under the proposed legislation/offence.

Caring for others can be a stressful and difficult job. If individual staff members are working in an environment where supervision and management are distant or inadequate, training falls far short of what is required to support them and staffing level and pay are set at the bare

minimum, occasionally even the most motivated people can become disillusioned.

What is very dangerous is when disillusion becomes 'dispathy', the state where the carer loses sympathy for the person they are caring for - over time the client/patient can become an object for the staff member/volunteer's discontent and frustration. This does not excuse their behaviour and they must be held fully accountable for their acts of ill-treatment and wilful neglect, but the organisation/employer must also be held to account for allowing the ethos to develop where their staff could commit such acts.

There is a related issue that the development of a negative environment should have been picked up and acted upon at an early date by the statutory inspection services. This is a separate issue and should not fall under this proposed legislation. The statutory inspection agency may be negligent and open to criticism but they are not directly responsible for the acts perpetrated upon the victims of the wilful neglect and ill-treatment.

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

Yes ☐ No ☐ - not applicable

As described above; and where the organisation has attempted to cover up ill-treatment or wilful neglect and where it has failed to take reasonable action to prevent or stop ill-treatment or wilful neglect of patients or residents.

**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 ☐

No specific comment.

**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 ☐

The ability to disbar organisations, companies and individuals from being involved in the provision of care for a defined time period, in the same way that company directors or trustees of charities can be disbarred.

Consideration may also be given to put the organisation under some kind of special measures, similar to those used in NHS England.<sup>i</sup>

**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?**

The new offence should have a favourable impact under the Equality Legislation, so all affected should benefit irrespective of age gender and so on against the protected characteristics. However, women may be over-represented in caring roles and the proposed new offence may leave them by virtue of gender more exposed to legal intervention and a greater likelihood of facing legal proceedings. This said, the proposed new offence should apply irrespective of gender and the same tests applied to all carers, with no higher or lower test by gender or age or race.

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<sup>i</sup> <http://www.nhs.uk/NHSEngland/bruce-keogh-review/Documents/Special-measures-FAQs.pdf>