

# 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

UNISON

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

Surname

Anderson

Forename

Diane

### 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

Please tick **ONE** of the following boxes

- (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 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

X 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 X No

UNISON believes that the new offence should cover all formal health and adult social care settings, both in the private and public sectors. It should also apply to the new joint arrangements for health and social care integration, and as there is an increasing use of the third sector in care, to voluntary and community settings as well.

As not all those who undertake health and care functions are currently registered, the list of professionals in Annex A should be extended to cover all employees – not just those registered by the medical and professional bodies. Homecare should also be covered.

There should also be opportunity for organisations providing care to be prosecuted, such as care home owners whose staffing policies, for example, lead to stressful situations and eventually harm to the service users.

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

Yes X No

UNISON believes existing legislation should protect those being cared for by family members. It would be very difficult to legislate for informal care of this kind and could stop some carers who may need help from asking for it, for fear of being stigmatised.

Carers employed under Self Directed Support arrangements should be included, however.

**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 X No

We believe that the offence should cover all health and social care services for children, with the exception of kinship and foster carers. We see no reason why the proposals have excluded children's services as they can be particularly vulnerable in care and hospital settings.

All residential settings, including care homes, schools; all nurseries; and health care settings, including mental health services should be included.

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

Yes X No

Especially in situations with a contractual relationship with an agency which has the responsibility of conducting checks, training, etc. The unpaid volunteer should not be responsible in these situations, but the agency who has commissioned them should be.

**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 X No

UNISON believes that the new offence should concentrate on the act of wilful neglect or ill-treatment of an individual, rather than any harm suffered as a result. It would be very difficult to prove the extent to which the actions had caused harm, so preferable to concentrate on the act.

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

Yes X No

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

Yes  No

For all breaches of adequate care, e.g. neglect of basic nutrients, water, hygiene; lack of medical treatment; lack of appropriate staffing levels/training/practices. We believe that if the offence applies to organisations, they will monitor and regulate staff more closely.

If organisations operate a system of poor care they could attempt to pass off complaints as the fault of the individual, rather than the organisation which is implementing the system. The owners and senior managers must be able to be held to account.

Also staff may not receive the support they need from the organisation to carry out their roles affectively and safely.

**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

We do not wish to comment on penalties for this offence.

**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

We do not wish to comment on particular penalties for this offence, but believe that charges of corporate manslaughter should be looked at.

**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?**

We believe these proposals will enhance protection of those subjected to discrimination, harassment and victimisation and will in particular aid older people and individuals with disabilities.