

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



## 1. Name/Organisation

Organisation Name

The Salvation Army

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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*

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

(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

(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

## INTRODUCTION

The Salvation Army Scotland is grateful for the opportunity to respond to this consultation. We provide services in a number of adult care settings, including care homes and housing support services.



We regard any form of wilful neglect and ill-treatment as a criminal offence and therefore support the consultation proposal in principle.

## CONSULTATION ANSWER FORM

**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

This is a reasonable approach. We see no reason why any formal health and adult social care setting should be excluded from the new offence.

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

Yes  No

We agree with this, so long as alternative offences apply in cases such as 'mate crime'. This is where people befriend vulnerable individuals and then use this friendship to exploit them, which could include ill-treatment.

**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

No comment

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

Yes  No

We agree, otherwise there will be different levels of governance, thereby creating a two-tier standard. (We regard voluntary care given on behalf of a voluntary organisation as different from informal care given by family or

friends). There may be a different level of training expected and provided for volunteers as opposed to professional staff – however, people providing care and support on a voluntary basis should still be suitably trained and supervised. Whatever the level of training, there is no reason why wilful neglect/ill-treatment should be tolerated in a voluntary setting.

**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

We believe the offence should be based on conduct rather than outcomes for the reasons stated in the consultation, and as is the case with the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2000. However, there is a need to distinguish between wilful neglect/ill-treatment and poor practice, which is often a training issue. (This is sometimes difficult to do – for example, if a member of staff shouts at a care home resident is it ill-treatment or poor practice?). It is important, as stated in the consultation document's introduction, that formal complaints procedures should continue to be available for cases where 'alleged neglect or ill-treatment cannot be attributed to deliberate misconduct.'

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

Yes  No

The proposal should apply to an individual, or anyone representing an organisation, as they are registered workers who are required to be aware of the expected standards of practice. The organisation should also be held to account to ensure appropriate structures are in place to provide a quality and safe service.

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

Yes  No

The offence should apply to organisations that have managed (or rather, mismanaged) their care in such a way that causes or allows a member of staff to wilfully neglect/ill-treat someone. Examples could include situations where organisations - after they have been alerted to concerns - have consistently and systematically failed to provide adequate development and training for staff, adequate supervision and support for staff, and adequate

resources, including funding, equipment and sufficient numbers of staff. We do, however, envisage situations where an organisation is not necessarily responsible for the offence. For example, with the increased dependency of residents in older people's care homes, staff members often have to focus on tasks rather than spending time with the residents. This is particularly the case with service providers that do not concentrate on private-funded residents, but rely on local authority funding, which is below the real cost of care. We do not believe organisations should be implicated in a case of wilful neglect if they are providing as many staff as they can afford under the existing funding regime - and managing them in the best way they can in these circumstances.

**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

It seems logical that the penalties in this case should be in line with those that apply under these other similar offences.

**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

In addition to fining an organisation, it may be appropriate in some cases for owners and directors to be barred from working in care and support, or from owning/managing a care and support service.

**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 don't envisage this creating a negative impact for people with protected characteristics. In fact, the proposed legislation should have a positive equality impact because it will bring the response to the wilful neglect/ill-treatment of people in health and social care settings into line with the response to the wilful neglect/ill-treatment of people with mental health issues and incapacity.