

17 December 2014

Health and Care Professions Council response to The Scottish Government's consultation on Proposals for an Offence of Wilful Neglect or Ill-treatment in Health and Social Care Settings

1. Introduction

- 1.1 The Health and Care Professions Council welcomes the opportunity to respond to this consultation.
- 1.2 The Health and Care Professions Council (HCPC) is a statutory regulator of health, social work and psychological professions governed by the Health and Social Work Professions Order 2001. We regulate the members of 16 professions. We maintain a register of professionals, set standards for entry to our register, approve education and training programmes for registration and deal with concerns where a professional may not be fit to practise. Our main role is to protect the health and wellbeing of those who use or need to use our registrants' services.

2. Our comments

- 2.1 We have set out our response to individual consultation questions below.
- 2.2 The HCPC is a regulator of individual health and care professionals rather than the organisations within which services are delivered. For this reason, we have limited our response to the areas relating to individuals rather than organisations.

3. Specific questions

- 3.1 **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, we agree.

HCPC registrants must adhere to high standards of professional conduct and practice when carrying out the work of their registered profession within any formal health or care setting. In particular, the HCPC standards of conduct, performance and ethics set out the ethical expectations of registrants, including that they act in and protect the interests of their patients or service users. Our registrants work in both the public and private sectors, across a variety of formal health and social care settings. The HCPC therefore supports the proposal that this new offence should cover all formal health and adult social care settings to ensure consistent and equitable public protection.

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

HCPC registrants providing care or treatment in a voluntary capacity must meet all professional standards, including the standards of conduct, performance and ethics as long as they are carrying out the work of their registered profession.

Regardless of their employment status or remuneration, individuals providing care or treatment on behalf of a voluntary organisation should be expected to protect the interests of service users. Given the proposals are not intended to cover instances of genuine error or accident, this seems a fair expectation of formal, if unpaid provisions of care and treatment.

3.3 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, we agree. The focus on the behaviour of the individual is consistent with our approach to regulation.

The HCPC was set up to protect the public from harm through regulating the members of its health and care professions. We regulate individual professionals on the basis of their conduct and competence. Registrants must meet all standards relevant to their profession, including the standards of conduct, performance and ethics in order to remain on the register and be considered fit to practice.

Where a registrant may not have acted in accordance with professional standards, the fitness to practise process enables the HCPC to deal with cases of professional misconduct or incompetence. We may take action where a registrant's fitness to practise is found to be impaired, in order to protect the public from the risk of harm. A registrant's fitness to practise may be found to be impaired regardless of whether any actual harm has occurred. Therefore it is the behaviour of the registrant that is the foremost concern of fitness to practise action.

3.4 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, we agree.

Since the proposed offence is a widening of scope of these existing offences, it would seem appropriate that the same penalties should apply across them. This

should ensure that offences are dealt with consistently and equitably. A lesser or greater penalty may inappropriately signal that willful neglect and ill-treatment is less, or more harmful against those with mental health issues or incapacity.