

Yes, make my response,

**RCN Scotland Response to the
Scottish Government Consultation on Proposals for an Offence of Wilful
Neglect or Ill-treatment in Health and Social Care Settings**

Introduction

8696.46 Temp File of MOC/PA/50164.63911 on 05/09/2016 08:36:19 v21(15) or12(w) nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the

of one individual. The legal focus on the individual has the potential to detract attention away from system learning and improvement. When care falls below the required standards nurses most commonly report to us that this is as a consequence of factors such as low staffing levels, lack of training and development, poor support, ineffective or misguided leadership. It is crucial that individual and organisational responsibilities are equally considered when allegations of wilful neglect are being investigated. Again if this balance is lost it has the potential to fatally undermine the culture change which is needed.

4. From a nursing perspective it is extremely important to be crystal clear that poor nursing standards do not automatically equate to wilful neglect. The Nursing Profession strives to deliver the best care possible but when this does not happen it is most frequently the result of some of the broader organisational issues already identified, not any deliberate or reckless act by an individual nurse. In addition it may

as to how the proposed new offence fits with that offence. It is to be noted that section 12 provides that offence is committed only where the wilful ill-treatment or neglect causes the child unnecessary suffering or injury to health. See the comments made by the English Court of Appeal in *R v Parulben Patel* [2013] EWCA Crim 965. *Parulben Patel* illustrates the complexities that can arise in the criminalisation of healthcare and in construing the meaning of the word “wilful” whatever the legislature might of had in mind. The accused did not escape conviction even where her actions were out of stress and panic. If a new offence is to be created, we submit it should contain the words “in a manner likely to cause the person unnecessary suffering or injury to health.” (see *R v Sheppard* [1981] AC 394 and *R v Turbill* [2013] EWCA Crim 1422).

8.

Social Care Services, which we broadly support and welcome. The Duty of Candour Consultation rightly identifies fear, a culture of blame, and professional and institutional repercussions as barriers which inhibit disclosure. We submit that it is likely staff will be less open and honest when things go wrong out of fear that by doing so may expose them or their colleagues to criminal charges of ill-treatment or wilful neglect, or will result in them initiating a criminal process creating years of uncertainty and the stresses of the adversarial criminal justice system. There are also

Should the new offence cover social care services for children, and if so which should be excluded from the scope the offence and explain your view.

Yes No

We do not agree that a new offence should be created now. If an offence is created and subject to our comments above it should cover all formal social care services for children in both the public and private sector. Reference is made to section 12(1) of the Children and Young Persons(Scotland) Act 1937. Further consideration is need as to how the proposed new offence fits with that offence. It is to be noted that section 12 provides that this offence is committed only where the wilful ill-treatment or neglect causes the child unnecessary suffering or injury to health. See the comments made by the English Court of Appeal in in R v Parulben Patel [2013] EWCA Crim 965 for the unsatisfactory position which is created if these words do not appear in the offence.

Should the offence apply to people who are providing care or treatment on a

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

Yes No

It should apply where the tests set out in the Corporate Manslaughter and Corporate Homicide Act 2007 are satisfied.

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

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.