

ANGUS COUNCIL

SOCIAL WORK AND HEALTH COMMITTEE – 13 JANUARY 2015

CONSULTATION ON PROPOSALS FOR AN OFFENCE OF WILFUL NEGLECT

**Background**

In October 2014 Scottish Government published a [consultation](#) inviting views on proposals for a new criminal offence of ill-treatment or wilful neglect of those receiving care and treatment in health and social care settings. The proposed offence will be similar to those that presently exist in relation to mental health patients and adults with incapacity. Angus Adult Protection Committee (AAPC) are currently preparing a multi-agency response to the consultation offering the views summarised below.

**Defining the Offence**

AAPC agree that the new offence should cover all formal health and adult social care settings both in the private and public sector on the basis that no care providers operating in the provision of care services in the community should be exempt. The offence should cover both formal and informal care arrangements on the basis that no group or individual should receive less protection from wilful neglect than any other group. It is acknowledged that guidance should address the definition of 'informal' carer ensuring that carers employed under self directed support should certainly be included. AAPC agree that the offence should be extended to cover social care services for children.

**Basing the Offence on Conduct not Outcomes**

AAPC agree that the offence should be based on conduct not outcomes as this is the course of action most likely to offer protection and act as a deterrent.

**Applying the Offence to Organisations**

AAPC fully agree that the offence should apply to organisations for example where the failure to provide adequate training, attention to medical needs, failure to adequately resource services have the potential to cause or have caused significant harm.

**Penalties**

It is proposed that the penalties for this offence should be the same as those specified for offences in relation to mental health and adults with incapacity. Angus APC agree with this however note that where organisations are concerned, courts should be given greater discretion to administer justice given the circumstances of each case. Maximum penalties specified to punish individuals are not suitable for larger organisations that have profited from neglectful practice.

The AAPC response is largely similar to the response recently shared by Social Work Scotland. In addition AAPC have referenced the incompatibility with adult protection legislation and recommend further consideration and assessment of this.

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