

Duty of candour and wilful neglect

Social Work Scotland's submission to the Scottish Parliaments Health and Sport Committee

Social Work Scotland is supportive of bringing in both the Duty of Candour and an offence of wilful neglect into legislation. As the professional leadership body for social work, we are keen that there is honest recognition when things go wrong and that there are sufficient legal remedies to deter and to react to vulnerable people being harmed by those supposed to be caring for them.

4. Do you support the proposed duty of candour?

Yes, Social Work Scotland does support the proposal within the bill to introduce a duty of candour.

5. Do you support the proposal to make wilful neglect or ill-treatment of patients a criminal offence?

Yes, Social Work Scotland would support making wilful neglect or ill-treatment of patients a criminal offence.

6. Is there anything you would add/remove/change in the Bill with regards to these provisions? - See more at:

<http://www.scottish.parliament.uk/gettinginvolved/91073.aspx#sthash.eIP0KKR9.dpuf>

We have a number concerns and questions about the Bill:

Duty of candour

1. The Bill refers to care providers as single agencies. This is straightforward if for example there is an incident involving negligence by a service run directly by a local authority, such as homecare. However, what if there is a shared responsibility for an incident say between a private homecare provider and a district nurse? In circumstances such as these it is not clear who will inform the family; and it is possible that a person would receive multiple responses and apologies from several different agencies.
2. It is unclear within the Bill what responsibility, if any, a local authority has as a contractor/commissioner/funder of a service if this is provided on its behalf by an external agency. If social work has completed an assessment of need/risk, completed a support plan and reviewed the service it would hold some responsibility if something went wrong with the contracted provider? If that is the case then a consequence of this Bill would be the need to vet all risk assessments and plans devised by the external provider.
3. Similarly it is unclear what responsibility the Care Inspectorate would hold in relation to incidents with regard to registered services where it inspects and evaluates?

4. The Bill is unusual in specifying that the duty applies to anyone who has received a 'social work service' (as well as a 'care service') suggesting that this is aimed at social work practitioners. It is not clear why this is the case and why health and other services would not be included.
5. Social Work Scotland has concerns around the definition of 'psychological' harm (described in the Bill as that which is in the opinion of a registered health professional constitutes 'harm but not severe harm') as a result of a 'care' or 'social work' service. It is stated that this will be amplified in regulations but more detail at this stage would be helpful. We have a number of questions about this:
 - a. How do we judge whether say a young person or an adult with learning disability has been harmed from their experience of being in care or attending a particular service or relate this to specific incidents?
 - b. How might these circumstances be dissociated from a host of other social/psychological factors in that person's environment or history?
 - c. How would we identify 'unintended' or 'unexpected incidents'? Would this then exclude a wider pattern of inadequate care or support? This would be clear when for example a foster parent, residential worker or another service user has physically or sexually abused an individual (when police would be involved and informing the family would be automatic). It is not so clear in other circumstances.
6. Social Work Scotland is concerned that this Bill has been drafted largely with the NHS experience in mind. The legislation must give effect across all services including local authorities.
7. The financial estimates within the explanatory notes assume there would be no additional costs for drafting procedures around disclosure, implementation including staff training, conducting reviews and preparing an annual report on the use of this duty and only £114,000 across all 32 authorities to provide appropriate support to those being informed. We are not convinced this level of resource is sufficient to implement the legislation.

Wilful neglect

1. The policy memorandum states that 'the intention...is to ensure that the worst cases of ill-treatment or deliberate neglect, which may be uncommon, can be dealt with effectively by the criminal justice system' so it aiming to be proportionate. Areas around ill-treatment or neglect within third sector or statutory services should be fairly clear. A much less straightforward issue is around poor professional practice:
 - a. if a social worker failed to keep to visits to an adult or child previously agreed within a protection plan and serious harm resulted could they be prosecuted?
 - b. if an organisation - line manager, head of service etc. - failed to provide a proper level of case supervision or re-allocate a case where a worker was long-term absent which similarly resulted in harm could this constitute an offence?
2. Clarification is also needed as to how the Bill will relate to the Self Directed Support (Scotland) Act 2014, in particular, how would it relate to:
 - a. the inclusion of personal assistants as 'care workers'
 - b. the position of the service user employing a personal assistant as a 'care provider'
 - c. the position of 'close family member' employed as an exception under SDS