

Ill Treatment or Wilful Neglect Chartered Society of Physiotherapy consultation response

To: Ill-treatment or Wilful Neglect Consultation
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Introduction

The Chartered Society of Physiotherapy (CSP) is the professional, education and trade union body for the physiotherapy profession. The CSP has 52, 000 members, representing 95 per cent of qualified physiotherapists in the UK, as well as physiotherapy support workers and students.

The CSP welcomes the opportunity to respond to this Department of Health consultation on introducing statutory offences for willful neglect. Our response is focussed on the areas in which we feel we can most effectively contribute to the debate.

The CSP plays a key role in ensuring high professional standards in the UK physiotherapy profession. It sets out clear expectations of members' professionalism through a Code of Professional Values and Behaviour¹ and Quality Assurance Standards².

The contribution of physiotherapy

Physiotherapy enables people to move and function as well as they can, maximising quality of life, physical and mental health and well-being. With a focus on quality and productivity, it puts meeting patient and population needs, and optimising clinical outcomes and the patient experience, at the centre of all it does.

As an adaptable, engaged workforce, physiotherapists have the skills to address healthcare priorities, meet individual needs, and to develop and deliver integrated services in clinically and cost-effective ways.

Physiotherapists use manual therapy, therapeutic exercise and rehabilitative approaches to restore, maintain and improve movement and activity.

¹ <http://www.csp.org.uk/professional-union/professionalism/csp-expectations-members/code-professional-values-behaviour>

² <http://www.csp.org.uk/publications/quality-assurance-standards>

Physiotherapists work with children, those of working age and older people; across sectors; and in hospital, community and workplace settings. Physiotherapists facilitate early intervention, support self management and promote independence, and help prevent episodes of ill health and disability developing into chronic conditions. Physiotherapy supports people across a wide range of areas including musculoskeletal disorders (MSD); many long-term conditions, such as stroke, MS and Parkinson's disease; cardiac and respiratory rehabilitation; children's disabilities; cancer; women's health; continence; mental health; falls prevention.

Physiotherapy delivers high-quality, innovative services in accessible, responsive, timely ways. It is founded on an increasingly strong evidence base, an evolving scope of practice, clinical leadership and person-centred professionalism.

Through the nature of their professional roles and activities, physiotherapists come into direct contact with patients across a diversity of care settings. They are therefore well placed to observe the nature of care that patients receive. The CSP welcomes this opportunity to comment on the proposed introduction of a new criminal offence of wilful neglect of patients and service users.

We propose that the new offence should apply in all formal adult health and social care settings, in both the public and private sectors. Do you agree with this approach? Please explain your answer.

1. Yes. The CSP represents members who work with patient/service users in a broad variety of service contexts, many of which are outside NHS and NHS-funded settings. We strongly support the view that patients and service users should be able to expect the same standards of care regardless of setting, and this position extends to the logical expectation that the same penalties for wilful neglect should apply across all care settings. We also support the principle that the proposed new law to protect adults with capacity should be in line with provisions made within the Mental Capacity Act

Should the new offence apply in all formal health settings in both the public and private sector used by children (including services used by both children and adults)? Please explain your answer

2. Yes. In line with our support for proposals to protect adults with capacity, the CSP supports proposals that would ensure that children are protected from wilful neglect in health care settings in all sectors. We support the principle of closing legislative gaps that mean that in some circumstances children may not be properly protected from wilful neglect by existing legislation.

Should the new offence apply in any other settings used by children (including services used by both children and adults)? Please explain your view and what sorts of services you believe should or should not be included.

3. Yes. In line with our support for proposals to protect adults with capacity, the CSP supports proposals that would ensure that children are protected from wilful neglect in social care settings, and in education and early years services. We

support the principle of closing legislative gaps that mean that in some circumstances children may not be properly protected from wilful neglect by existing legislation.

We propose that only formal health and social care arrangements should be within scope of this offence. Do you agree with this approach? Please explain your view.

4. The CSP notes that the proposal to only include formal contractual care arrangements may leave adults with capacity who are being cared for by relatives in informal arrangements vulnerable to a gap in legal protection from wilful neglect. We accept that all children should have adequate protection under existing criminal law provisions. Some cultures may have a greater adoption of informal care arrangements, as this is the culturally accepted norm. These groups may not use formal arrangements, even when such formal arrangements are both appropriate and available. The implication of this is that adults with capacity in some cultural groups may remain vulnerable.
5. The CSP accepts, however, that a proportionate approach to legislating for informal arrangement needs to be taken, and that family acting as informal carers should not have an unnecessary burden or fear of litigation placed upon them.

We propose that the new criminal offence should focus entirely on the conduct of the provider/practitioner, rather than any consideration of the harm caused to the victim of the offence. Do you agree with this approach? Please explain your view.

6. Yes. It is the 'nature' of act, i.e. wilful neglect, that is the culpable behaviour which should be subject to sanction. If it is the degree of severity of the outcome which is legislated for, then that could be interpreted as implying that wilful neglect that results in no harm, or minimal harm is regarded as less serious than acts resulting in serious harm. The CSP supports the view that all wilful neglect is culpable.
7. However, where individuals are 'employed', these provisions should not mean that an individual becomes a scapegoat for an organisation's failings. Poor employment structures, systems and management may leave individuals at risk of criminal liability when they are part of a wider poor organisational culture. We would expect an individual who is employed to be prosecuted as an individual only when there is a concurrent prosecution against the organisation for its failings as well.

Do you agree that an approach based on the way in which an organisation managed or organised its activities is the best, most appropriate way to establish the offence in respect of organisations? Please explain your view.

8. The CSP supports the view that all patients and service users should be protected from wilful neglect, regardless of whether the 'perpetrator' is an individual, organisation or partnership. We have no specific opinion on how this is

best achieved in law, although we accept the reasoning given which suggests that following the principles contained with the Corporate Manslaughter & Corporate Homicide Act 2007 may provide the framework for corporate provider legislation.

We propose that penalties for individuals convicted of this offence should mirror those set out in section 44 of the Mental Capacity Act 2005. Do you agree? Please explain your view.

9. The CSP has no specific comment to make on indicative penalties for individuals.

Do you agree with our proposals in relation to penalties in respect of organisations? Do you think there are other penalties which would be appropriate?

10. The CSP has no specific comment to make on indicative penalties for organisations.

We propose adopting the same approach to referral of private prosecutions to the Director of Public Prosecutions as is available in respect of the section 44 offence in the Mental Capacity Act 2005. Do you agree? Are there other ways to address this issue?

11. The CSP has no specific comment to make on this matter.

Do you think that any of the proposals set out in this consultation document could have equality implications? If so, please tell us about them.

12. As highlighted in point 4 (above), the CSP would highlight the impact of cultural norms on informal care arrangements, which may have equality implications that need to be addressed.

The Chartered Society of Physiotherapy
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For further information on anything contained in this response or any aspect of the Chartered Society of Physiotherapy's work, please contact:

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