

## STAGE 3 HEALTH (TOBACCO, NICOTINE ETC. AND CARE) (SCOTLAND) BILL – 3<sup>RD</sup> MARCH 2016

### RCN Position

The RCN is the UK's largest professional association and union for nurses with around 40,000 members in Scotland.

RCN would never condone the wilful neglect or ill-treatment of a patient. It goes against the very tenants of health and social care professionalism and the ethical duty of care that our members have towards their patients.

We have raised however, during evidence to the Health and Sport Committee on the Bill, our serious concerns that the proposals in section 3 of the Bill will undermine efforts to encourage greater openness by healthcare professionals and organisations when something does go wrong.

### Duty of Candour

We support the creation of a legal requirement for health and social care organisations to inform people, or their carers/families, when they have been harmed as a result of the care or treatment they have received.

Our evidence to the Health and Sport Committee made clear that the Duty should be an organisational, and not an individual, responsibility.

The introduction of the Duty of Candour does afford the opportunity to drive cultural change in organisations to ensure that staff are supported to learn and make improvements from mistakes. We know that such openness improves patient safety.

It is, however, crucial that staff have the required knowledge and skills, and that they receive adequate training and support around the Duty.

The provision of additional funding for training and support for organisations which will be subject to the Duty of Candour is therefore welcome. We hope that the Scottish Government will be open to working with professional bodies around training requirements.

### III-Treatment and Wilful Neglect

We appreciate that there is widespread political support for the creation of the new offence. Nevertheless we still have very real reservations about this part of the Bill.

Our primary concern about a new criminal offence, even if it is intended for only the most exceptional cases of neglect or ill-treatment as the Scottish Government has made clear, is that it will have the opposite effect to that intended by introducing a Duty of Candour.

The threat of criminal proceedings against individuals will be counterproductive to building a culture of transparency, learning and improvement within our NHS, and indeed outside it, which is key for patient safety.

When care falls below the required standards, nurses most commonly report to us that this is as a result of factors such as low staffing levels, lack of training and development, poor support and ineffective or misguided leadership.

According to the NHS Scotland staff survey only 57% of nursing and midwifery staff currently feel that it is safe to speak up and challenge the way things are done. We believe that the legal focus on the individual could detract attention away from wider organisational and cultural issues.

We also remain unconvinced that the wide range of sanctions which already exist are inadequate. There is no evidence that individuals or organisations are failing to be held to account when there are failings in health care delivery.

We believe the provisions in civil and criminal law, including Protecting Vulnerable Groups legislation, as well as professional regulatory systems (such as the NMC and GMC) can already deal effectively with cases of deliberate neglect or mistreatment when they arise.

## **Stage 2 Amendment on the provision of voice equipment**

We were pleased to see this amendment to the Bill.

Our written evidence to the Health and Sport Committee on the amendment can be found [here](#).

## **Conclusion**

Whilst we support the introduction of a Duty of Candour we still have very serious reservations around the offence of ill-treatment and wilful neglect.

We accept, however, that the offence will be created. We therefore look forward to the discussions around the type of education, training and support that health and care professionals receive.

## **Further information**

Our written evidence to the Health & Sport Committee on the Bill can be found [here](#). We also gave oral evidence on 15<sup>th</sup> September 2015.

If you would like any further information please contact Sarah Atherton, Parliamentary and Media Officer, by email at [sarah.atherton@rcn.org.uk](mailto:sarah.atherton@rcn.org.uk) or by telephone 0131 662 6172.