



# Wilful neglect, ill-treatment and corporate homicide

Guidance for social service workers, providers,  
managers, supervisors, social workers and social  
work students

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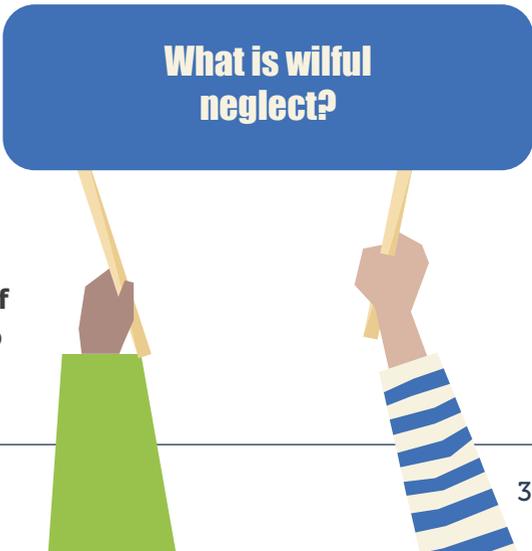
# Purpose of this guidance

This guidance provides general information on the offence of wilful neglect or ill-treatment of an adult receiving adult health or social care. The offence was created under the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 ('the 2016 Act'). An offence can be committed by care workers or adult health or social care providers while providing or arranging health and social care. This guidance provides general information, explaining what type of behaviour could amount to an offence. If you think someone (either a worker or a care service provider) may be committing this type of offence, the guidance provides basic information about what to do.

The Corporate Manslaughter and Corporate Homicide Act 2007 created an offence of corporate homicide in Scotland. This guidance also provides general information about the offence of corporate homicide and explains how it may apply to providers of care services in Scotland.

You should read this guidance together with any policies and procedures your employer/organisation has about these offences, alongside the [SSSC Codes of Practice](#) and [other guidance](#) we have available for workers and employers. There is a list of resources available to workers and employers at the end of this guidance.

**The information in this document is for general guidance only. It is not a full statement of the legal position but provides basic information. If you wish any further detail or are unsure of the position, you may wish to consider seeking legal or other advice.**

An illustration showing two hands holding a blue sign. The hand on the left is wearing a green sleeve, and the hand on the right is wearing a blue and white striped sleeve. The sign is a rounded rectangle with the text 'What is wilful neglect?' written in white.

**What is wilful neglect?**

# Wilful neglect and ill-treatment – a criminal offence

An offence of wilful neglect or ill-treatment may be committed against an adult receiving health and/or social care.

An adult receiving health and/or social care is any person who is:

- aged 18 or over experiencing care from a support service, care home service or a housing support service or who is being cared for by nurses placed by a nursing agency
- aged 16 or over who is receiving an offender accommodation service or has been placed by an adult placement service.

## What is wilful neglect or ill-treatment?

Neither wilful neglect or ill-treatment are defined in the 2016 Act that created the criminal offence so their meanings could be interpreted differently by different people. However, the Scottish Government released policy guidance in 2015 suggesting that the 2016 Act was to ensure the worst cases of ill-treatment or deliberate neglect were dealt with effectively by the criminal justice system. So, it's suggested that you consider reporting acts of ill-treatment and acts of deliberate neglect following the steps in the flowchart (see p12).

### Workers

An individual commits a criminal offence if they are a care worker who wilfully neglects or ill-treats an adult receiving health and/or social care.

A care worker is:

- an employee who provides adult health care and/or adult social care
- a volunteer who provides adult health care and/or adult social care
- a manager or supervisor who supervises or manages those employees and/or volunteers described above
- or a director or similar officer of an organisation with employees or volunteers who provide adult health or adult social care as described above.

This will include all workers, managers, supervisors and practitioners who are registered on the following parts of the SSSC Register:

- care at home services
- housing support services
- care home services for adults
- social workers, working within a support service, care home service, housing support service or offender accommodation service (for adults); or in an adult placement service
- social work students, working within a support service, care home service, housing support service or offender accommodation service (for adults); or in an adult placement service.

It may also include workers who are not registered with the SSSC.

If providing care is only incidental to the worker's other activities (for example, where the worker is a cleaner in a care home) then such a person is not a care worker for this purpose.

## Care providers (organisations who provide care)

Care providers commit an offence if **all** three of the following things happen:

1. an individual is wilfully neglected or ill-treated by someone providing health or social care on behalf of the care provider, and
2. the care provider's activities are organised in such a way as to be a gross breach of the duty of care owed to the individual (that is the conduct falls far below what would reasonably be expected), and
3. if not for that gross breach, the wilful neglect would not have occurred (or would have been less likely to occur).

A care provider is:

- (a) any organisation (body corporate, partnership, or unincorporated association) which provides or arranges for the provision of adult health care or adult social care; or
- (b) an individual who provides adult health care or adult social care and employs, or has otherwise made arrangements with, other persons to assist with the provision of that care.

Providers of adult social care include:

- (i) providers of the following care services to the extent the service is provided to people aged 18 or over:
  - a support service (including care at home services)
  - a care home service
  - a nurse agency and
  - a housing support service

(ii) providers of the following care services to the extent the service is provided to people aged 16 or over:

- offender accommodation service
- adult placement service.

## How do I spot wilful neglect or ill-treatment?

If a care worker is deliberately failing to care for someone properly or is being cruel towards someone, this is likely to be considered wilful neglect or ill-treatment and you should report it.

Some examples might be:

- not providing food to an adult who requires their meals to be prepared and brought to them
- not washing an adult who requires assistance with washing themselves regularly
- being verbally abusive towards an adult who receives health and/or social care
- physical violence toward an adult who receives health and/or social care
- a care service provider failing to act where they are aware of practices which result in the serious neglect of adults using their care service
- care service providers consistently failing to ensure the health and safety of people who use their service resulting in serious risk to their life, health or wellbeing, despite concerns being raised by staff or external agencies.

You may not always directly observe behaviours/actions of concern but you should always remain alert to possible signs that an adult receiving care is being ill-treated or willfully neglected. Signs may include bruising, dirty clothing or bedding, changes in personal hygiene.

If you are unsure about reporting something that concerns you, please report the behaviour using the following resource:

<https://www.sssc.uk.com/fitness-to-practise/raising-a-concern/>

## What should I do if I notice wilful neglect or ill-treatment? (and your duty to report)

### Workers' responsibilities under the SSSC Codes of Practice

The SSSC Codes of Practice set out clear standards of behaviour and competence you need to meet to provide safe and effective care to people who use services. The Codes set out what good practice and conduct look like. It also reflects professional and public expectations of the role of a social service worker. This includes **an obligation to report** harm, exploitation and any dangerous, abusive or discriminatory behaviour.

Code 3 states that as a social service worker, you must promote the independence of people who use services while protecting them, as far as possible, from danger and harm. Workers will:

- 3.2 Use established processes and procedures to report allegations of harm and challenge and report exploitation and any dangerous, abusive or discriminatory behaviour or practice.
- 3.6 Be open and honest with your employer, people who use services and carers when care has or may have caused physical, emotional, financial or material harm or loss.
- 3.9 Enable people who use services and carers to make complaints. Take complaints seriously and either respond to them or pass them to the appropriate person. Take appropriate action when there is an allegation of harm.

Code 5 states that as a social service worker you must uphold public trust and confidence in social services. Workers will not:

- 5.1 Abuse, neglect or harm people who use services.

Code 6 states that as a social service worker you are accountable for the quality of your work. Workers will:

- 6.1 Meet relevant standards of practice and working in a lawful, safe and effective way.

If you have immediate concerns about the safety and wellbeing of an individual receiving health and/or social care you should not wait to act. You should follow your employer's adult support and protection procedures and where appropriate seek medical treatment and/ or police intervention.

If you are told not to raise or follow up a concern, even by someone more senior than you, you should not stay silent. All registered workers have a duty to be open and honest.

For further information about raising concerns and whistleblowing please read the [Raising concerns in the workplace: Guidance for employers, social service workers and social work students](#).

## Reporting guidance for workers

Firstly, try to report this to your line manager or another manager at your service. If this is not possible (such as when the person you are reporting is your manager) or if you report the wilful neglect or ill-treatment and nothing is done about it, you should try one of these options.

- If the service you work for/your employer has a whistleblowing policy, you can follow that policy to report wilful neglect or ill-treatment.
- If the wilful neglect or ill-treatment is a result of how the service is run or is caused by a policy in the service, you should report this to the Care Inspectorate:  
<http://www.careinspectorate.com/index.php/complaints>
- If you are reporting an individual worker, you should report it to the SSSC who investigate individuals registered with them (this includes managers)  
<https://www.sssc.uk.com/fitness-to-practise/raising-a-concern/>.
- You should report this behaviour to the police.

See the flowchart on wilful neglect reporting guidance on page 12.

## Reporting guidance for care service providers

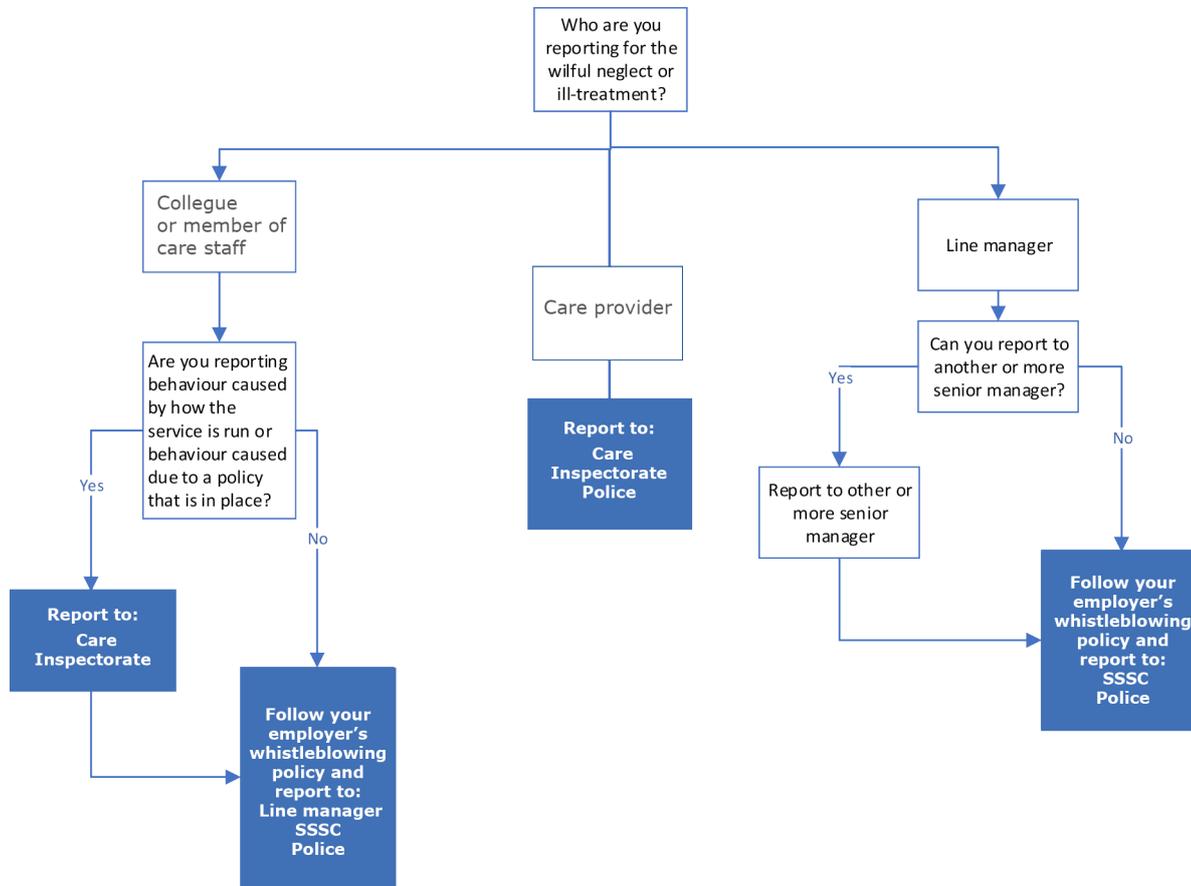
- You must report the matter to the police and the Care Inspectorate. You can make a notification on the eForms system. The notification requirements for care services is on the [notifications page of the Care Inspectorate website](#).
- If the wilful neglect or ill-treatment was carried out by a member or members of staff, you may have responsibilities under the duty of candour if it amounts to a serious adverse event. Further general information on the duty of candour is on the [duty of candour page of the Care Inspectorate website](#).
- If the wilful neglect or ill-treatment was carried out by a worker or workers, you must report the matter to the relevant professional regulator (for example, the SSSC, the NMC etc).

See the flowchart on wilful neglect reporting guidance on page 12.

## What if I'm unsure whether I saw wilful neglect or ill-treatment?

- You should report the matter using one or more of the above methods if you feel there is, was or could have been wilful neglect or ill-treatment occurring, even if you are not sure. The Care Inspectorate, the SSSC and the police can make enquiries and investigate what you have reported.
- If you have concerns about the quality or standard of care being given, but do not think it is neglect or ill-treatment, you should feel able to speak out. We publish guidance on raising concerns in the workplace if you are unsure how to do this: <https://www.sssc.uk.com/fitness-to-practise/raising-a-concern/>.

# Wilful neglect reporting guidance flowchart



# Corporate homicide

The Corporate Manslaughter and Corporate Homicide Act 2007 created the offence of corporate homicide. Organisations and companies can be found guilty of corporate homicide where gross failure in the way activities are managed or organised results in a person's death.

The offence can be committed by corporate bodies, including companies, listed public bodies or by partnerships, trade unions or employers' associations (where they have employees).

Organisations can be prosecuted when the activities of the business cause a death through a gross breach of duty of care owed to the deceased. The focus is on how the activities were managed or organised by senior management when supplying goods and services.

An organisation will have a duty of care:

- where there are systems of work and equipment used by employees
- over the condition of worksites and other premises
- where products or services are supplied to customers.

A gross breach of duty is where the alleged conduct 'falls far below what can reasonably be expected of the organisation in the circumstances'.

An offence of corporate homicide may be committed by a provider of care services, in circumstances where:

- the provider is a corporate body
- there is a death which results from the activities of the service

- the provider owed a duty of care to the deceased
- the conduct of the provider, in managing or organising the service, fell far below what could reasonably have been expected of the organisation in the circumstances.

Providers of care services will owe a duty of care to their employees and to users of the care service.

**Workers have a duty to report concerns under the SSSC Codes of Practice**



# About us

## Care Inspectorate

The Care Inspectorate was established in 2011 as the regulatory body for care services in Scotland. It has the general duty of furthering improvement in the quality of care services in Scotland.

Its vision is for world-class social care and social work in Scotland, where every person, in every community, experiences high-quality care and support, tailored to their rights, needs and wishes.

The Care Inspectorate inspects registered care services, assessing quality against the Health and Social Care Standards. It can investigate complaints about care services. If it finds that care is not good enough, it can take action, including making recommendations and issuing requirements for improvement and change.

## Scottish Social Services Council

The Scottish Social Services Council (SSSC) is the regulator for the social service workforce in Scotland. Our work means the people of Scotland can count on social services being provided by a trusted, skilled and confident workforce.

We protect the public by registering social service workers, setting standards for their practice, conduct, training and education and by supporting their professional development. Where people fall below the standards of practice and conduct we can investigate and take action.

# More information

[SSSC Codes of Practice](#)

[Health and Social Care Standards](#)

[Guidance on how and when to make a complaint about a worker or someone applying to register](#)

[Raising concerns in the workplace: Guidance for employers, social service workers and social work students](#)

[Complaints - if you are unhappy with a care service](#)

[Notification requirements for care services](#)

[Information on Duty of Candour: care services and social work services](#)



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