Mia Snook
Room 2E11, Quarry House
Quarry Hill, Leeds
West Yorkshire
LS2 7UE

Dear Mia,

Rather than respond to the consultation document as a formal response, we thought that it would be more appropriate to respond in letter form. We appreciate that there is a gap in the law with regards to the wilful neglect of those who have full capacity and are glad that the DH has decided to legislate swiftly in this area.

As the new law appears as though it will be modelled very closely on the Mental Capacity Act and its stipulations for prosecuting those guilty of wilful neglect, when drafting this law, the Department should pay close attention to lessons that can be learnt from the implementation of that Act. For instance, if there have been any issues with regards to prosecuting on the basis of conduct rather than harm, these should be addressed, or if there have been cases where the judiciary have described punishments as either being too punitive or lenient, such concerns should be addressed also. The creation of new legislation presents an ideal time in which to learn from previous oversights and to reinforce good practice and such an opportunity should not be missed.

We do believe however that the term, 'wilful' should be defined in statute. Although, we understand that the term is used regularly in case law, the vast majority of social care professionals and workers do not have legal backgrounds. Consequently, if this new law were to be extended to social care settings, confusion might be created regarding the term 'wilful neglect' and when it does and doesn't apply. As your consultation document repeatedly states, the last thing that this law wants to do is discourage the provision of high quality care. Without a statutory definition for the term 'wilful', we feel that any new law could encourage unnecessary risk aversion and by enshrining a definition in statute, this potential harm could be mitigated.

Another reason for having a clear definition of the term 'wilful' is due to the new CQC Fundamental Standard safeguarding service-users from abuse. As you have stated in the document, neglect is covered in the Standard, but wilful neglect is not. This is important in the sense that the new law implies that wilful neglect would be an issue for the CPS, whilst neglect would be one for the CQC. As a consequence, if there is no clear delineation between the two, this could create significant and potentially debilitating overlap between the two bodies, in addition to making providers fear that genuine accidents could result in criminal prosecutions. We once again feel that a clear definition of the term 'wilful' would resolve this issue.

Subsequently, we fully support the need for legislation and hope that the advice that we have given is taken into account when the language for this law is drafted.

Yours sincerely,

Jamie Balbes
Policy Officer, Care England