

Wilful Neglect – what you need to know

What is Wilful Neglect?

1. **Wilful Neglect (S44 of the Mental Capacity Act 2005)** of adults who lack mental capacity to consent or object to the treatment and care provided by workers, volunteers and/or carers/family members. Anyone who ill-treats or wilfully neglects an adult who lacks capacity may, via a criminal enquiry, face up to 5 years in prison and/or a fine.
Where can this take place? – All health care settings, all social care settings and the adult’s home
2. **Wilful Neglect (sections 20 – 25 of the Criminal Justice and Courts Act 2015)** of adult who **has** capacity to make decisions about their care and treatment, it is likely they may be under duress or coercive control.
Where can this take place? - All health care settings, all social care settings and the adult’s home.
Who can wilfully neglect adults? – Anyone who is paid to provide social care or health care for adults. (Social care includes all forms of personal care and practical assistance provided to adults who are in need of support as a result of age, illness, disability, pregnancy, dependent on drugs/alcohol or any other similar circumstances)

For both offences, the criminal process will explore the following

- The person causing the harm knows their actions/lack of action is likely to be unacceptable
- Despite knowing this, they chose not to care for the adult appropriately or denied them access to the necessary care and treatment

Case examples

Case example	outcome
Jail for care trio who filmed their abuse of elderly adults at X nursing home ▶ Three care workers took mobile phone footage of the “inhuman and degrading” abuse of two old people, which were played in court. The footage showed an 86-year-old man being bullied, baited and taunted and a 99-year-old woman sprawled, legs apart, on the floor pleading for help.	The workers were jailed for between 18 months and three years
Two care workers who tormented elderly residents by abusing therapy dolls and mocking them and taking footage of this, causing distress to residents were charged with ill treatment and wilful neglect of adults in their care	The workers were jailed for 12 and 13 months
Care worker who left housebound woman, 43, to starve to death when she didn't visit her for FOUR DAYS, lied to boss about checking on the adult who had experienced a life changing stroke. The victim couldn't move without assistance and was fed through tube. As a result of the neglect she fell into coma having been left without food, fluids and medication. Whilst the victim was fighting for life, the care worker used the time to visit her own	jailed for three years

mother	
<p>A care worker was caught on camera after concerned relatives of the victim hid a covert camera in a gift box in her room after becoming suspicious about cuts and bruises on the 89-year-old's body. Bosses at the care home, said they were "shocked and appalled" by the crime and apologised to the victim.</p> <p>She pleaded guilty to ill treatment and neglect. Speaking after yesterday's hearing at Blackpool Magistrates' Court, the victim's daughter, said: "That is the sentence we hoped for. She used my mother like a rag doll when she was old and frail."</p>	The worker was jailed for 12 weeks.
<p>Frail 90 year old was violently yanked out of a chair and into a wheelchair causing her to yelp out in pain as the bone shattered</p> <p>Shoved man, 75, who has a spinal condition, into a chair</p>	The worker admitted to three offences of ill-treatment or neglect of a person who lacks capacity and she was sentenced to nine months behind bars for the incident.
<p>The female worker took photos of a victim wearing sunglasses; the victim was unable to put them on herself. She also photographed another woman on the toilet with another victim in front of her; she took photos of a resident's medical records which contained images of a sore on his buttock.</p> <p>Another photograph shows two victims placed in bed together. The court heard both women have mobility issues and could not have got in the bed themselves. Photos included a male worker standing next to a victim with her underwear pulled down to her thighs. She was crying.</p>	The female worker pleaded guilty to five counts of ill treatment/willful neglect of a person without capacity against five different women. The male worker admitted two charges of ill treatment/willful neglect of a person without capacity against two different women.

Safeguarding

All of these cases would meet the threshold for safeguarding and should be referred in as soon as possible, in all these cases disciplinary action should be considered and an early conversation with the police considered and any evidence preserved.

Additional information

For the individual offence a 'care worker' includes anyone who, as paid work, provides social care for adults or health care for children or adults. A 'care provider' is defined as a body corporate or unincorporated association which provides or arranges for the provision of health care or adult social care. A 'care provider' can also include an individual who provides these services and employs/makes arrangements for other people to assist in providing that care

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