

The crime of wilful neglect now protects all women

The Government has put into law a recommendation of the National Advisory Group on the Safety of Patients in England (2013) that called for a new statutory criminal offence of wilful neglect covering all women, regardless of age or decision-making capacity. The call to criminalise ill treatment or wilful neglect for all groups echoed the view of the official inquiry into Mid Staffordshire NHS Trust, that more criminal sanctions should be available to prosecute poor care (Mason, 2013).

Ill treatment is given its ordinary English meaning and so includes any behaviour that a court would reasonably consider to be abusive (R v Strong [2014]). Neglect occurs when a nurse or midwife fails to do what he or she would be expected to do in the care and treatment of a person in his or her care. This has been held to include: falsifying records, failing to give medication, failing to provide CPR (Griffith, 2013). To be wilful, it must also be deliberate.

The number of prosecutions for ill treatment or wilful neglect by health and other care workers has risen considerably since the Francis Report in England (House of Commons, 2013) and the Andrews Report in Wales (Andrews and Butler, 2014) highlighted episodes of poor care resulting in the death of vulnerable patients.

Three offences were available but they only applied to specific classes of patient:

- The Mental Health Act 1983, section 127 made it an offence to ill-treat or wilfully neglect a patient receiving treatment in a hospital for a mental disorder
- The Children and Young Persons Act 1933, section 1 made it an offence to ill-treat or neglect a person under 16
- The Mental Capacity Act 2005, section 44 made it an offence to ill-treat or

wilfully neglect a person who lacked decision-making capacity.

The new criminal offence

Parliament has now removed the restrictions on when a prosecution for ill treatment and wilful neglect can occur, and introduced a new law covering all women in the care of a midwife. Although health care is a devolved issue for the governments of England and Wales, the law has been introduced through a criminal justice statute, which is not devolved, and so it applies in both England and Wales.

The Criminal Justice and Courts Act 2015, section 20 now makes it an offence for a care worker to ill-treat or wilfully neglect a person in their care. A care worker is defined as anyone who is paid to provide health or social care, and so includes midwives. The requirement for a care worker to be paid was included to ensure that relatives, volunteers and other informal carers would not be subject to prosecution under the Act.

The wording of the 2015 Act also makes it clear that, in the case of health care, the offence applies to those who ill-treat or wilfully neglect adults and children (Criminal Justice and Courts Act 2015, section 20(3)).

Health care is defined by the 2015 Act as including, but is not limited to, health care relating to physical health, mental health, public health, and procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition. This comprehensive definition includes all aspects of maternity care, and would also include women undergoing public health measures such as smoking cessation and those receiving cosmetic procedures. A midwife guilty of either offence can now face a maximum sentence of up to 5 years in prison.

The new law criminalises what would previously have been left to the Nursing and Midwifery Council (NMC) to deal with as a matter of professional misconduct, or to the midwife's employer to handle under

disciplinary procedures. For example, a midwife who failed to monitor or keep records of regular checks on three women was given a 1-year caution by the NMC for neglect. The neglect included leaving a woman alone when she felt the urge to push, resulting in the woman delivering her baby alone and the child falling to the floor (Williams, 2013).

The NMC also suspended a senior midwife who was found guilty of professional misconduct and neglect when she ignored several calls for help from the husband of a woman in her care. The woman became unresponsive but the midwife went home instead of assisting with resuscitation efforts. The NMC held that the midwife had failed to help an utterly dependent woman, and this was particularly serious as she was in charge of the unit at the time (Kelly, 2014).

A coroner also held that the death of a baby was contributed to by the neglect of the midwives attending him when they failed to call for help when his heart rate fell dramatically during labour. The coroner held that, had an obstetrician been called in time, the baby's life would have been saved (Telegraph, 2012).

Now, where a midwife is found to have neglected a woman or her baby in a similar manner, he or she will face prosecution as well as a professional misconduct and employer's disciplinary hearing.

Care provider offence

The Criminal Justice and Courts Act 2015, section 21 creates a further offence that applies to care providers, including organisations that arrange for the provision of maternity care. This would include hospital and community Trusts, health boards and clinical commissioning groups.

A care provider commits an offence where:

- a care worker ill-treats or wilfully neglects an individual
- because the care provider's activities are managed or organised in a way that

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- in the absence of the breach the ill-treatment or wilful neglect would not have occurred, or would have been less likely to occur (Criminal Justice and Courts Act 2015, section 21 (1)).

To be guilty of an offence, a care provider would have to be in gross breach of its duty of care to the woman. That is, the organisation will have had to have fallen far below the standard normally expected of it in the discharge of its duty of care. The wording of the offence means that it will be much easier for the police and Crown Prosecution Service to bring charges against individual midwives than their employing hospitals or community services.

Conclusion

The Criminal Justice and Courts Act 2015 introduces a new offence making it unlawful to ill-treat or wilfully neglect a woman or child in your care. If the offence occurred as a result of a gross breach of the employing organisation's duty to the woman or her baby, then it too can face prosecution.

To avoid prosecution, it is essential that midwives are able to demonstrate that they have discharged their duty of care to women and babies by acting with probity, applying the standards of care required



by the law and professional regulator, and ensuring their records accurately reflect their involvement in care.

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