

Care Homes Briefing

Solicitors

Number 59

New Criminal Offence: Prosecution for Neglect

The Mental Capacity Act 2005 introduces a new criminal offence, namely, the ill treatment or neglect of an incapacitated person¹.

The provisions of the Act that introduce the offence have been in force since 1st April 2007 and the first prosecutions have now been reported.

Prosecutions

The Managing Director of a care home company and other members of staff including (the Deputy Manager, the Operations Director and the Home Manager) have been prosecuted on the basis that they had neglected residents at an old people's home in Gloucestershire. Some residents are said to have been sleeping beside their own waste and the allegations made by the prosecution include mouldy faeces found in one of the rooms, filthy toilets and lack of any stimulating activities for the patients.

The prosecution allege that there was a lack of information regarding care plans and in many cases no care plan at all. The toilets were of a poor quality and there was alleged to be a general hygiene risk.

The prosecutions follow a joint operation between the local police and CSCI. The case continues.

Comment

The new offence is potentially very wide ranging. There is no definition in the Act of either "neglect" or "ill treatment". As such, there is ample scope for disgruntled families or residents to allege that the care and treatment of residents comes within this provision. The police appear to be increasingly willing to investigate such allegations. Even if the obligations are groundless, the fact of the investigation itself can cause significant stress for home managers and their staff who may be arrested, photographed, finger printed and interviewed under caution. In such circumstances, the

¹ See Mental Capacity Act Countdown Briefing Number 10.

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staff are entitled to legal representation at the interview, and advice on the suspected offence in respect of which they are being questioned. Care is needed in particular

to explain the healthcare aspects of a situation which may not be well understood by the police.

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Out of office emergency advice available 24hrs on 07802 506 306.

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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