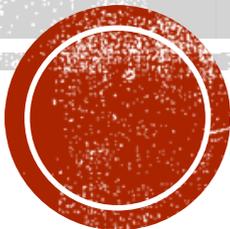


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**THE SEXUAL CONTRACT IN
PAID CARE WORK:
EVIDENCE FROM THE
PROSECUTION OF CARE
WORKERS FOR 'NOT CARING'**

A red circular graphic with a white border, positioned to the right of the text.

**THE CONTEMPORARY MEANING OF PAID CARE
WORK IS BEST UNDERSTOOD THROUGH A
RECOGNITION THAT THE CONTRACT OF
EMPLOYMENT PROVIDES ONLY PART OF THE
STORY, SINCE IT RELIES ON A CO-EXISTING
SEXUAL CONTRACT.**

“The sexual contract helps explain why singular problems arise about contracts to which women are party”

The exchange taking place within the employment contract in paid care work is not one of security for obedience.



**THE CAPACITY TO PROSECUTE CARE WORKERS
DEPENDS UPON THE CONTRACT OF
EMPLOYMENT, BUT IN PROSECUTIONS, THE
STORY OF THE EMPLOYMENT CONTRACT IS
MISSING . . .**

“The sexual contract serves as a form of discipline”

The root of their offending it to have exhibited “a couldn’t care less attitude”



THE PROBLEM OF ELDER ABUSE IN THE UK IS SYSTEMIC . . .

A form of gender-based violence.

Poor quality employment, under-staffing and rights violations create conditions for abuse.

“Neglect and Omission” is the most common form of elder abuse.

The upholding of public confidence in marketised systems of care requires the upholding of the Sexual Contract and the criminal law is being used with that aim.



ILL-TREATMENT AND WILFUL NEGLECT. THE MENTAL HEALTH ACT 1983

Section 127: **'staff of, or otherwise employed in, or who is one of the managers of, a hospital or care home.**



ILL-TREATMENT AND WILFUL NEGLECT. THE MENTAL CAPACITY ACT 2005

Section 44 (1) Subsection (2) applies if a person (“D”)— (a) **has the care of** a person (“P”) who lacks, or whom D reasonably believes to **lack, capacity,**

(2) D is guilty of an offence if he **ill-treats or wilfully neglects** P.

(3) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine or both.



ILL-TREATMENT AND WILFUL NEGLECT. CRIMINAL JUSTICE AND COURTS ACT 2015

Section 20 (1) It is an offence for an individual who **has the care** of another individual **by virtue of being a care worker** to ill-treat or wilfully to neglect that individual.

(2) ...

(3) “Care worker” means an individual who, as **paid work**, provides—

(a) health care for an adult or child, other than excluded health care, or

(b) **social care** for an adult



FROM WILFUL NEGLIGENCE TO 'NOT CARING'

Children and Young Persons' Act 1933

***R v Sheppard* [1981] AC 394 HL 283**

(Lord Diplock) 'a failure, for whatever reason, to provide the child whenever it in fact needs **medical aid**, with the medical aid it needs'.

'a parent was either aware that the child's health might be at risk if it were not provided with **medical aid** or that the parent's unawareness of this fact was due to **not caring** whether the child's health was at risk or not'.

(Lord Keith) fails to provide **medical care** which his child needs because **he does not care** whether it is needed or not'. [1981] AC 394 HL 418 (Lord Keith of Kinkel).



FROM WILFUL NEGLIGENCE TO 'NOT CARING'

Mental Capacity Act 2005

***R v Patel* [2013] EWCA Crim 965**

The focus of the MCA s. 44 offence is on the behaviour of the accused, not the impact on the victim.

Stress or panic did not erase her awareness of the need for assistance

(Lord Justice Jackson) 'neglect is wilful if a **nurse** or medical practitioner **knows** that it is **necessary** to administer a **treatment** and deliberately decides not to carry out that treatment, which is within their power but which they cannot face performing'



**WOULD A FAILURE TO GIVE A PERSON A
DRINK, OR A FAILURE TO HELP THEM TO BED
OR FAILURE TO HELP THEM USE THE TOILET
CONSTITUTE A FAILURE TO ADMINISTER A
'TREATMENT'?**



**AT WHAT LEVEL DOES KNOWLEDGE OF THE
'NECESSITY' MATERIALISE?**

MEDICALLY NECESSARY?

NECESSARY AS A DUTY OF EMPLOYMENT?

MORALLY NECESSARY?



**ARE SOCIAL CARE WORKERS PREVENTED FROM
CITING STRESS OR PRESSURE AS A REASON
FOR A FAILURE TO ACT ...**

**DESPITE THE FACT THAT THEY OFTEN WORK IN
UNDER-RESOURCED ORGANISATIONS ON SHIFTS
WHICH ARE UNDER-STAFFED?**



FROM WILFUL NEGLIGENCE TO 'NOT CARING'

Mental Capacity Act 2005

***R v Turbill* [2013] EWCA Crim 1422**

'gross carelessness' would not of itself be enough to constitute wilful neglect.

'failing to do what a careful and competent practitioner would do is not enough'
... a conviction would require **'something more'** than evidence of a known duty and its reckless breach ... to act or refrain from acting 'because of ***not caring*** whether **action** was required or not'

'a couldn't-care-less attitude'



'STEPS HAVE BEEN TAKEN BY THE HOME TO REMEDY ANY POSSIBLE SYSTEMIC FAILURES TO ENSURE THIS KIND OF INCIDENT CANNOT HAPPEN AGAIN. WE TRULY HOPE SO [...] THERE WERE SYSTEMIC FAILINGS [...] THERE WAS A SHORTAGE OF STAFF, A FAILURE TO DIRECT STAFF AS TO HOW THEY HAD TO CARRY OUT THEIR DUTY [...] MORE SYSTEMIC FAILINGS IN THE HOME HAVE BEEN RECTIFIED.'



**IT IS IN THE PUBLIC INTEREST TO SEE 'CARE
WORKERS BEING HELD ACCOUNT FOR THEIR
CARE'** Lady Justice Hallett in *R v Turbill*



'SABOTAGE THE SHIFT, THERE WAS A DOWNING OF TOOLS'

Judge Brown in *R v Kenyon* [2014]
1 Cr. App. R. (S.) 71

No evidence of long-term consequences but Kenyon 'must have known [she was putting residents at risk']

'it is clear to me that you took your anger out on [residents] by wilfully neglecting them such that by the end of the shift they were in a very soiled and saturated state'



**'A DISPLAY OF PETULANT BEHAVIOUR WHICH
EXPOSED VULNERABLE PERSONS IN NEED OF
PROTECTION TO APPALLING CONDITIONS'**

Judge Dingemans in *R v Kenyon*

'REPULSIVE AND SICKENING'

Lord Justice Laws in *R v Kenyon*

**'A LONGER [PRISON] TERM MAY WELL HAVE
BEEN JUSTIFIABLE'**

Mr Justice Edis in *R v Strong*



**THE UPHOLDING OF PUBLIC CONFIDENCE IN
MARKETISED SYSTEMS OF CARE REQUIRES THE
UPHOLDING OF THE SEXUAL CONTRACT AND
THE CRIMINAL LAW IS BEING USED WITH
THAT AIM.**

