



3rd Floor
Caspian Point 2
Pier Head Street
Cardiff Bay
CARDIFF
CF10 4DQ

Telephone: 029 2044 2070
Fax: 029 2044 2071
E-mail: info@cpwales.org.uk
www.cpwales.org.uk

Ms Sian Wilkins
Committee Clerk
Legislation Office
National Assembly for Wales
Cardiff Bay
CF99 1NA

06 September 2007

Dear Ms Wilkins

Re: Consultation Proposed NHS Redress (Wales) Measure Committee

Reference: NHSR Committee letter dated 20 July 2007

Thank you for inviting Community Pharmacy Wales (CPW) to submit evidence to the above Committee which is looking at the proposed NHS Redress (Wales) Measure.

CPW is the body recognised in statute to represent the body of NHS Contracted community pharmacy contractors delivering NHS pharmacy services in the community across Wales. CPW represents over 708 contractors and these range in size from the small independent to the large corporate pharmacy companies. This response reflects the impact of the proposed measure on community pharmacists contracted to provide services within Primary Care.

At the outset CPW would wish to state that is not opposed to the principles contained within the proposed Measure and it considers the aims and objectives to be totally laudable. Notwithstanding this it is critical that any process that is introduced should not only be fair to the patient / claimant but also to the practitioner. Having said this there are major issues of Clinical Governance and how the proposed Measure ties in with professional performance, Fitness to Practise and other professional regulatory issues. None of these has been addressed in the Measure and they demand urgent attention to clarify.

CPW is firmly of the view that the proposed Measures are targeted at secondary care in the first instant and it believes that a very cautious approach should be taken in any move to extend the ambit of the Measure to encompass community pharmacists contracted within Primary Care. As you are no doubt aware all community pharmacists practicing in primary care are required by their Regulatory body, to ensure their professional activities are covered by adequate professional indemnity arrangements and we are concerned at any impact this proposed Measure would have for this requirement. This will need very careful handling and negotiation with the Insurance Policy providers / underwriters and

with this in mind I have requested that the Chemists Defence Association (CDA) which is part of the National Pharmacy Association also submit evidence to the committee. I have also requested the Pharmacists Defence Association do likewise.

CPW would urge the Measure Committee to consider very seriously whether it would be apposite at this time to defer any inclusion of primary contractors until a later date after a period of discussion and consultation with both the NHS Representative Bodies and Professional Regulatory bodies and their concomitant insurance providers.

If I now take the specific questions in turn:

1. *Why is a Redress Scheme required?*

CPW are firmly of the view that a Redress Scheme for community pharmacists contracted within primary care is **not** required at this time. All practitioners are required to have adequate professional indemnity arrangements and any claim by a patient for redress against the practitioner is currently handled via the insurance policy. To date CPW is not aware of any difficulties or dissatisfaction with this process nor is it aware of any patient dissatisfaction. It is worth pointing out that the combination of the insurance arrangements and the NHS complaints procedures currently provide patients with a range of options – from simple apology, which may be all that is required, through compensation payments with or without admission of liability, to large contest claims. It would appear that current situation addresses what the Measure intends. This scenario also provides for the settlement of claims by the insurance provider without recourse to NHS funding. If the redress Scheme were to be introduced it is assumed that these costs would transfer to the NHS Wales and thus there would be an increased cost implication for the NHS Wales to fund. It is also assumed that the costs associated with the provision of legal advice to patients / claimants would also transfer to the NHS Wales budget. The question that begs to be asked is “Where is the problem that needs to be fixed?”

2. *Does the proposed Measure achieve the policy objective?*

It is difficult to make a judgement on the achievement of the policy objective without seeing the full supporting legislation. Whilst it is acknowledged that the devil is always contained in the detail of any Measure it is for consideration that as far as primary care practitioners are concerned the objective is unclear. As stated above it is for consideration that there is no issue within primary care pharmacy contractors to date but if the objective is to transfer the inherent costs and associated financial risk from the private sector to the public sector within primary care then it is believed that this has been achieved by the Measure.

3. *What are the views of stakeholders who will have to work with a redress system?*

CPW is concerned at the outset about the proposed Measure and its impact on Primary Care contractors with the change in process of one of professional indemnity insurance to an LHB redress process. The draft Measure does not define the process that will be adopted within each LHB but CPW would wish to insure that, if the Measure was introduced to encompass Primary Care contractors, that they were suitably represented in the redress process. Also clear guidance would have



be provided to the profession on how claims settled on a professional's behalf by the LHB would be dealt with from a registration and fitness to practise viewpoint.

4. *What will be the practicalities of making the system work and does the proposed Measure make provision for these?*

It is very difficult to say what the practicalities of making the system work without having further details of the supporting legislation, however, CPW would wish to be involved in the consultation process if it was decided that the Measure should include primary care contractors.

5. *Is it appropriate that so much be done by regulations, i.e. the details of any scheme or schemes will be decided by Welsh Ministers?*

CPW has no particular view on this question provided that a full and thorough consultation process is completed in order to inform the draft regulations. CPW would wish to be involved in this process if it impinges on primary care pharmacy practitioners.

6. *The Measure related to redress in relation to liability in tort, i.e. where some fault is established without recourse to the courts. Would it be better for the Assembly to seek the power from Westminster to introduce a "no-fault scheme"?*

CPW would not wish to see a "no-fault scheme" introduced in Wales as it is considered that this could see a vast increase in the cases for redress and it would be very difficult from a regulated professional perspective to manage instances of no-fault settlement and its implication for professional regulation.

In conclusion CPW whilst supporting the principles and thrust of the proposed Measure are of the view that the extension of the Measure to encompass primary care practitioners is not required or justified at this time.

Yours sincerely



Catherine Stanley
Business & Contracts Manager
Community Pharmacy Wales

