

more detail will follow, but it is felt that professions and trade unions, the service and the public are being asked to support a measure for which there is not enough detail.

- 2.2 The CSP considers that this is a very important Measure. It is the first Assembly Measure and will therefore set a standard. Powers are now passing to the Ministers, rather than the Assembly as a whole. With this new arrangement, we must be completely sure that all processes are in place to support the delivery of these powers and that an adequate level of scrutiny is undertaken.

Again, the professional body is concerned that the draft Measure does not contain enough information on the powers to be enacted thereby preventing professions, such as the CSP from playing as full and active a role as we would like in such a momentous piece of Welsh legislation.

- 2.3 The CSP hopes the Proposed NHS Redress (Wales) Measure Committee will look at other systems such as the 'no-fault scheme' and take evidence from Scottish and English colleagues who have been grappling with the same policy area. We must be sure that all avenues have been explored – and if necessary the Assembly may need to seek alternative powers from Westminster.

Questions remain as to whether it might be better to spend more time trialing the possible options (and learning from trials elsewhere) in order to be sure what instruction needs to be placed in the statutory instrument upon which we can then be consulted.

3. Consultation Questions

1) ***Why is a Redress Scheme Required?***

The CSP acknowledges the arguments included within the Minister's explanatory memorandum to the Proposed NHS Redress (Wales) Measure 2007.

- It will give patients the ability to secure redress without recourse to legal proceedings
- It will form part of a set of integrated arrangements and procedures for dealing with incidents.

There is support from the profession for developing systems to improve the current processes, speed up resolution, improve explanations for patients and promote a culture of improvement amongst NHS bodies.

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

The CSP notes (page 8 of the Explanatory Memorandum),

'There has been no formal consultation on the policy objectives of the Measure or on the detail contained in it. Formal consultation will take place in 2008, subject to the Measure being passed, when the detail of the new arrangements, to be set out in regulations, will be presented in full.'

The CSP considers it is impossible to answer the question set by the Committee as the draft is worded flexibly and there will not be more detail until the Measure is passed.

Additionally, the CSP can only assume that section '*objectives of the legislation*' (p6) is the policy objectives section. It is spelled out clearly what the policy objectives actually are.

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

Physiotherapists will play an appropriate role in relation to processes within NHS Trusts, Local Health Boards or other employment delivering services within the health service in Wales for whom they may work. The professional body and trade union must be involved in developing these processes. Systems that are developed must be done so in full consultation with staff and their representatives.

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

Whilst the CSP supports the principles underpinning the Measure, there is concern that, at this stage, it is difficult to know what the practicalities of making a system work will be because we do not yet have enough detail. Scenarios must have been developed and worked upon in order to draft the regulations so the CSP is disappointed that more information has not been made available at this stage.

A question is posed – what is to stop people from engaging in the NHS redress process but then rejecting the outcome and continuing down the legal route? If this was the end result then the setting up of such schemes might prove to be a very costly and time consuming exercise – for little or no beneficial outcome to any party.

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

The CSP cannot say specifically if it is appropriate that so much should be done by regulations. We do not have experience in this area. We do however highlight that scrutiny by the **whole** Assembly is only taking place the first time the regulations are made. After this, 'negative resolution procedure' will be used and we understand that this will mean the **whole** Assembly will not scrutinise any further changes made by the Minister which do not relate specifically to Acts. Where powers are so wide and

perhaps not well defined, this Measure will make powers that potentially give Ministers unlimited discretion.

6) *The Measure relates to redress in relation to liability in tort, ie, 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'?*

The CSP has limited knowledge or experience of the various systems but believes the proposed NHS Redress (Wales) Measure Committee must look at all available options – including the option to trial some systems before committing to legislation.

New Zealand and Sweden operate 'no fault' systems so it will be useful to look at these models. Scotland is also considering such a system so it would be useful to talk with Scottish colleagues to learn about their deliberations to date. Equally, England is looking at NHS redress and it would be useful to chart their progress so far and lessons to be learned.

The CSP is confident that the Committee, through its evidence, will be able to recommend the best course of action for the people of Wales.

4. Final Comments

- 4.1 The CSP is aware of how important this first Assembly Measure is to both the Welsh Assembly Government, but also to the Assembly as a whole, following the Government of Wales Act 2007 and commencement of new powers. It is therefore very important that we get it right and that the legislation that is passed works well for Wales.
- 4.2 The professional body has limited expertise in this area but physiotherapists will be covered by the legislation so it is important that the CSP should have a view. Whilst there is support for the principles underlying the need for such a measure there is concern about signing up to something that is too vague. More detail on the statutory instrument is required.
- 4.3 The CSP has been pleased to play an active role in this consultation process. If further information is needed in relation to this submission, pleased do not hesitate to contact our Cardiff Office.

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In association with:
The Welsh Board of the Chartered Society of Physiotherapy