

NHSR17

Our ref: GBW/CAW/NPA/CONSULTATION – PROPOSED NHS
REDRESS (WALES) MEASURE COMMITTEE

Your ref:



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

Mallinson House
38-42 St Peter's Street
St Albans, Herts AL1 3NP
Tel 01727 832161
Fax 01727 840858
email npa@npa.co.uk

13 September 2007

Dear Ms Wilkins

CONSULTATION – PROPOSED NHS REDRESS (WALES) MEASURE COMMITTEE

Thank you for inviting us to make submissions to the Committee in respect of the proposed NHS Redress (Wales) Measure 2007.

The National Pharmacy Association represents the interests of community pharmacies. We have, in voluntary membership, over 12,000 community pharmacies, which comprises virtually all the community pharmacies in the UK. The NPA provides a representative voice for its members as well as a range of services to help them with both commercial and professional aspects of running their businesses.

The Chemists' Defence Association is a wholly owned subsidiary of the National Pharmacy Association and is an insurance company and provides NPA members and their employees/persons engaged by them to work in their community pharmacy businesses with professional indemnity, public liability and legal expenses cover. The Chemists' Defence Association, through a separate trading body, also offers individual Pharmacists (locum Pharmacists and Pharmacists who work in a Primary Care setting) with professional indemnity insurance.

The Chemists' Defence Association provides PI and PL cover to 553 pharmacy proprietors in Wales.

Claims which are made by members of the public/third parties against NPA members and PPI policy holders are dealt with by the Chemists' Defence Association and the majority of these claims are handled in house.

Representation is also provided to members and Pharmacists who hold separate professional indemnity policies of insurance at NHS Tribunals and Disciplinary Hearings before the regulatory body – the Royal Pharmaceutical Society.

Continued.....

Ms Sian Wilkins
13 September 2007

Having had the opportunity of considering the proposed measure and the accompanying explanatory memorandum our initial view is that the overall aims and objectives are directed towards secondary care and it is unlikely that the anticipated benefits will have the same impact on the primary sector, particularly in community pharmacy. That said, the principles contained in the proposed measure are laudable and attempt to address a long standing problematical area.

We turn now to the specific questions raised by the consultation.

1. WHY IS A REDRESS SCHEME REQUIRED?

Purely from a Chemists' Defence Association standpoint, the answer is that it probably is not required in so far as community pharmacy is concerned. Generally speaking, the present system for dealing with complaints (in so far as it relates to community Pharmacists) appears to be working reasonably well and we are not aware of any real concerns in that area. Our experience is that whilst some patients who use the NHS Complaints Procedure are satisfied with the outcome and do not pursue a claim for compensation, more often than not patients intimate claims for compensation independently of any NHS Complaints Procedure and the desire is to receive compensation for an error. Indeed, the current Complaints Procedure often works hand in hand with a claim for compensation.

2. DOES THE PROPOSED MEASURE ACHIEVE THE POLICY OBJECTIVE?

Whilst it is noted that the Regulation making powers that are being sought in the measure are wide enough to apply the NHS redress arrangements to primary care, it would seem that the proposed measure is geared towards Hospitals and specialised commissioned care and in the absence of any Regulation, it is very difficult to comment on whether the proposed measure achieves the policy objective in so far as it relates to pharmacy contractors and others in the primary care sector. For reasons which will become apparent later in this submission, there is a danger that Regulations could be made to try and achieve a policy objective when, in actual fact, the existing avenues of redress for patients appear to be working in a satisfactory manner.

3. WHAT ARE THE VIEWS OF STAKEHOLDERS WHO WILL HAVE TO WORK WITH A REDRESS SYSTEM?

4. WHAT WILL BE THE PRACTICALITIES OF MAKING THE SYSTEM WORK AND DOES THE PROPOSED MEASURE MAKE PROVISION FOR THESE?

Continued.....

Ms Sian Wilkins
13 September 2007

6. THE MEASURE RELATES 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'?

The following submissions should be considered in relation to the questions numbered three, four and six.

Some of the issues which arise in clinical negligence claims against Hospitals do not tend to apply in community pharmacy. That said there are often complex issues on causation which need full investigation and as insurers the Chemists' Defence Association would be reluctant to pay compensation where there may not be a need to do so. Those of us dealing with claims at the Chemists' Defence Association often make judgements at an early stage in a claim so that where on the face of it a mistake or error has been made and the harm caused (if any) is slight and the investigation of that claim by obtaining medical evidence is outweighed by a modest payment with or without admission of liability and/or as a goodwill gesture, decisions are taken to follow this route without there being undue delay in settling a case. It is accepted that causation is often the sticking point in the handling of any claim and commercial considerations often dictate whether causation is investigated to the nth degree. Much depends on the value of the claim and we note that no indication of the value of claims which fall to be dealt with under the measure is given. As an aside, we would be very interested to learn how the Pilot Scheme for Resolution of Clinical Negligence Claims Between £5,000 and £15,000 has worked and we note that this scheme is to be evaluated in the autumn of this year.

One of the concerns we have, which is highlighted in the explanatory memorandum, is that the proposed measure could bring claims into the system which otherwise might not have been pursued. Our experience is that sometimes a patient who uses the NHS Complaints Procedure is satisfied with the outcome of that procedure and does not pursue a claim for compensation. More often than not, patients intimate claims for compensation independently of any NHS Complaints Procedure and the desire is to receive compensation for an error. It is noted that the measure provides legal advice and advocacy support for patients and that this will be provided "free of charge". We understand that this might assist patients who have complaints and claims against Hospitals and Trusts, but where the provider of the service is a GP, Pharmacist, Optometrist, etc., and has separate professional indemnity insurance, will the ultimate aim be for the NHS to recoup the costs of providing legal advice and advocacy to patients from insurers? If so, there will be a knock on cost to the healthcare professional which ultimately may rebound on the NHS. We can see a benefit to insurers of having independent legal advice and advocacy support provided free of charge to patients and if that were to remain the case, then some claims which are now dealt with by Solicitors under conditional free arrangements could result in cost savings to professional indemnity insurers.

Continued.....

Ms Sian Wilkins
13 September 2007

However, this might be at the expense of increased claims. Our experience is that patients who wish to bring claims for compensation against the proprietors of community pharmacies either intimate the claim themselves or they instruct Solicitors. The majority of claims for compensation are fairly modest (there are, of course, always exceptions) but the payment of costs to Claimant's Solicitors because of conditional fee arrangements is more often than not way out of proportion to the value of such claims. There is concern that if individuals seek redress and the process either fails or the individual changes his/her mind and opts to pursue a "conventional" claim, will any Solicitor who then picks up that claim, say for example after "redress" has been exhausted, be prejudiced or hampered in any way and will the indemnity insurer potentially have to pick up or pay increased costs as a result.

It is accepted that in cases of limited value – those which prima facie have no difficult issue on causation – the instruction of a joint expert is appropriate. There are some cases where it is appropriate to instruct a joint expert and where each party needs to rely on a single expert.

As an insurer, the Chemists' Defence Association would be unhappy with any suspension of the limitation period. Like any indemnity insurer, we want to be able to close a claim at the expiry of the limitation period and not have cases outstanding on our books pending the agreement or otherwise of a patient in a case which is being dealt with under the redress arrangements.

We acknowledge that a lot of the professional indemnity claims that are dealt with by the Chemists' Defence Association result from dispensing errors. With the majority of those cases, it is normally fairly straightforward to make a decision on whether there has been a breach of duty – negligence – but we also understand that in cases where a treatment or advice/diagnosis is the subject of a claim the issue of negligence/breach of duty is not clear cut and therefore these proposals/measures may impact much differently on other insurers. We too deal with claims where negligent advice is at the centre of the allegations made by the patient/complainant against the Pharmacist and in those circumstances the issue of whether there has been negligence or breach of duty is often not so easy to determine. We would certainly not wish to see a "no-fault scheme" introduced in Wales.

The other area which causes concern is the extent to which any complaint/claim under this measure against a Pharmacist would impact on any disciplinary/process and whether, and if so to what extent, it is held on the practitioner's record. The Committee is reminded that Pharmacists are currently subject to "quadruple jeopardy". In the event of an error, they potentially face:-

1. A complaint being made to the PCT.
2. A claim for compensation.
3. A complaint being made to the regulatory body – the RPSGB.
4. Prosecution.

Continued.....

Ms Sian Wilkins
13 September 2007

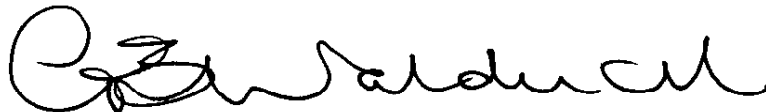
Consequently there is more than adequate redress against a Pharmacist Contractor/Pharmacist at present.

5. IS IT APPROPRIATE THAT SO MUCH BE DONE BY REGULATIONS I.E. DETAILS OF ANY SCHEME OR SCHEMES WILL BE DECIDED BY WELSH MINISTERS

The Chemists' Defence Association does not have any strong views about this but we would wish to see a full and thorough consultation process and be involved in the process if it is likely to affect primary care pharmacy practitioners and the Pharmacists they employ or engage.

Overall the proposed measure, whilst laudable, should not apply to community pharmacy practitioners because it seems disproportional to the numbers of complaints/claims which are currently made and therefore it cannot be said to be required or justified at this time.

Yours sincerely



G B Walduck
Legal Executive
National Pharmacy Association

