

Mr Jonathan Morgan AM
National Assembly for Wales
Cardiff Bay
CF99 1NA

BY E-MAIL: legislationoffice@wales.gsi.gov.uk

e-mail: tim.musgrave@huttons-solicitors.co.uk

Our Ref: TMM/dtm

Friday, 14 September 2007

Dear Mr Morgan

RE: CONSULTATION – PROPOSED NHS REDRESS (WALES) MEASURE COMMITTEE

I am a Solicitor in private practice and I specialise in clinical negligence, acting for Claimants. I am a member of the AvMA (Action Against Medical Accidents) and Law Society Clinical Negligence Panels. I was a member of the Working Party whose discussions led to the introduction of the Speedy Resolution Scheme in February 2005. I am also a member of the Legal Services Commission's Funding Review Committee which deals with legal aid appeals in these cases.

I write with reference to your letter dated 20th July. For the avoidance of doubt, I confirm that I am writing to you in a purely personal capacity and that I would be willing to give oral evidence to the Committee.

In your letter dated 20th July, you have posed six questions. I am writing to set out my views as a Solicitor specialising in clinical negligence cases.

1. Why is a Redress Scheme required?

The question presupposes that a Redress Scheme is required. The objectives of providing “a holistic package of remedies” to the patient and encouraging a change of culture within the NHS when things go wrong (“learning the lessons” and achieving an improvement in patient care in the future) are laudable. The key question is whether a Redress Scheme would achieve these objectives and that must depend upon the way in which the Scheme would work in practice. I am not convinced that the creation of an alternative method of resolving claims where there is a “qualifying liability in tort” is likely to prove to be a truly effective way of achieving a change of culture within the NHS. It may bring about positive changes in the way in which claims are dealt with and some improvements in “the system”

but, in reality, a complaint/claim under the Redress Scheme is still a complaint/claim in which fault/negligence must be accepted or proven and, as such, many of the problems referred to in Edwina Hart's Explanatory Memorandum are likely to persist.

2. Does the proposed Measure achieve the policy objective?

No. As Hugh Williams from AvMA has said, the devil is in the detail. The Measure provides for the introduction of a Redress Scheme but doesn't spell out the way in which the Scheme will operate.

3. What are the views of stakeholders who will have to work with a Redress Scheme.

As a solicitor with experience of advising patients in relation to NHS complaints and claims, I would welcome the opportunity to play a part in the consultation process regarding the detail of the Scheme (Section 4 of the Explanatory Memorandum). I believe it is essential that solicitors with relevant experience of acting for the Claimants and Defendants are involved in the consultation process.

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

See above. The Measure doesn't set out the practicalities of the Redress Scheme at all.

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?

It would not be appropriate for me to comment in detail on what is a constitutional issue. I note that the Measure essentially mirrors the provisions of the NHS Redress Act 2006. Given that the devil is in the detail, it is at least possible that the Scheme in Wales will operate in a different way to any Scheme introduced in England. Consultation on the detail of the Scheme is essential.

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"?

No. The issue of no-fault compensation was dealt with at some length in "Making Amends". The Chief Medical Officer concluded that a no-fault compensation scheme was unaffordable.

I look forward to hearing from you in due course.

Yours sincerely

**TIM MUSGRAVE
HUTTON'S**