NHS REDRESS MEASURE/PUTTING THINGS RIGHT PROJECT

INTERIM FINANCIAL IMPACT ASSESSMENT – JANUARY 2008

1. Background

1.1 The Explanatory Memorandum, which accompanied the introduction of the NHS Redress Measure on 2nd July 2007, set out some initial analyses of the potential costs of introducing arrangements to allow the NHS to settle certain lower-value clinical negligence claims locally. This was based on work done by the Department of Health for the NHS Redress Bill in England and extrapolated for Wales. An explanation of the work is attached at Annex A. The assumptions from that work (i.e. a potential increase in cases of between 15 and 43 per cent) are used throughout this document. However, we have also added a 60 per cent increase range as a worst case scenario.

1.2 Following receipt of the interim reports from the three *Putting Things Right* Project Working Groups further work has been carried out and this paper provides more detail on the potential financial impact of the Measure and wider work. A final financial report will be prepared **by Easter 2008**, drawing on the further work of the Working Groups by that time, to inform Stage 2 consideration of the Measure, due to complete by 9th April. At this point, it is important to note that the analysis is set within the context of possible wider changes to the way in which the NHS in Wales handles things that go wrong, of which NHS Redress is one element.

1.3 This paper has been prepared by officials of the Department for Health and Social Services of the Welsh Assembly Government.

2. Predicted costs and potential savings

Staffing levels and skills required

2.1 The Investigation and Process Working Group is agreed that a single investigation process should be put in place for complaints, claims and patient safety incidents. This will require staffing levels and skills suitable to conduct robust and appropriate investigations as well as to be able to consider issues such as liability and settlement of claims in appropriate cases. In general terms we are of the view that this can largely be achieved by the streamlining of existing resources at Trust level, however, there may be a requirement to boost the direct staffing levels in some areas.

2.2 A questionnaire was sent out in the autumn of 2007 to all Welsh NHS Trusts and Powys Local Health Board (LHB) to ascertain the existing skill mix and resource devoted to the resolution of complaints, claims and incidents. Overall, there was a good response rate from the 15 NHS trusts with:

- 13 responding on complaints;
- 12 responding on claims and

- 9 responding on incidents.

2.3 The responses reveal that Trusts have varying numbers of staff working directly in these areas and other staff across Directorates who have training and skills in carrying out investigations.

2.4 There are considerable differences in staff ratios across Trusts. For example, the ratio of staff to claims varied from 1 per 57 cases to 1 per 149 cases. Similarly, the skill mix and seniority of staff shows wide differences locally - qualifications and experience varied with some staff having no formal training and others having legal diplomas or higher. Some, but not all Trusts satisfy the Welsh Risk Management Standard for claims handling, which requires that Trusts must have access to a claims manager who has received external training and who holds or who is working towards a formal qualification. The National Patient Safety Agency (NPSA) has also trained a core group of staff in every organisation in Root Cause Analysis (RCA) investigative techniques. However, it is not clear how effectively this resource is deployed across the board. Whilst Trusts will retain the flexibility to manage any new arrangements to suit local needs, the aim of the Putting Things Right project work is to deliver a consistency of outcome.

Further work will therefore need to be done to assess the level of training and skill required additional to that which already exists in staff directly involved in this type of activity. This will be addressed in more detail before Easter.

2.5 It is also envisaged that additional training for frontline staff in disclosure and investigation would be required over the first two years to encourage a proactive culture in dealing with things that go wrong. This would include specific training to increase the number of individuals who could conduct Root Cause Analysis investigations. An initial programme, funded centrally through the Department's agreement with the NPSA, provided training to all NHS organisations in Wales. Subsequent training has had to be funded by the organisations themselves. Within an integrated investigation process, we would envisage having to extend such training to a much wider group of staff and to ensure consistency, we would anticipate commissioning a further all-Wales programme, estimated at **£300,000** in the first year and **£150,000** in the second year.

Guidance

2.6 It is anticipated that a revised guidance manual would be required complemented by a series of road show events to publicise the new arrangements. The costs for these activities is estimated to be around **£100,000** and would be funded from the Public and Patient Involvement Budget Expenditure Line (BEL 0265) within the DHSS Main Expenditure Group (MEG).

Independent Review

2.7 Independent Review (IR) forms the second stage of the complaints procedure.

2.8 It currently costs **£354,000 per annum** which funds staff located at the NHS Business Services Centre, independent lay reviewers' fees and expenses, training and development and panel costs. Additionally around **£100,000 per annum** is paid by Trusts for clinical advice to support the IR process.

2.9 In the autumn of 2007 questionnaires were used to gather views on IR process from the Welsh NHS and members of the public who have used the process. The feedback was mixed. Many suggested the process raised complainants' expectations, but was then unable to deliver the outcome they wanted while others felt IR gave organisations a useful second chance to put things right.

2.10 In its interim report the Investigation and Process Working Group doubted the value of the extant IR process and recommended that Independent Review be either:

- replaced with a system similar to the Scottish model through which resolution is sought locally, followed if necessary by direct referral to the Ombudsman; or

- redesigned to include only the options of referral to a panel or to the Ombudsman.

2.11 Replacing the IR process would potentially release £454,000 per annum (including clinical advice costs), while redesign would result in little cost saving because those elements of the process where costs are incurred would remain largely unaltered. Lay reviewers would still be required to decide whether to have a panel; clinical advice would still be needed to enable them to make such a decision; and all the panel costs would remain as now.

Primary care

2.12 The Investigations and Process Working Group concluded in its interim report that Local Health Boards (LHBs) should be able to investigate formal complaints and issues concerning GPs and other primary care practitioners. There a number of staff across LHBs in Wales working on complaints, however, at present they do not conduct investigations into or deal with claims against primary care practitioners as they have no direct role in doing so.

The final financial impact assessment, to be completed by Easter 2008, will include advice on the appropriate level and additional cost (if any) of staffing, skills and training required to address primary care complaints, including the scope for redeployment of staff currently involved in the IR process. This would not include the NHS Redress element of any arrangements, as further work is needed on this.

Impact on Ombudsman's investigations

2.13 New, more accessible and proactive arrangements are bound to increase the number of investigations to be conducted locally. Whilst the aim is to handle the vast majority of these successfully at local level, we would anticipate an increase in the number of cases going to the Ombudsman, particularly if the IR process is abolished. In Scotland, IR was abolished in 2005 and there was a 128% increase in cases going to the Ombudsman in 2005/06. The measures introduced in Scotland that year in the revised NHS complaints procedure sought to make it easier to use and emphasised the message: it is OK to complain. If IR were to be abolished in Wales and, as expected, the number of complaints received were to increase, cases received by the Public Services Ombudsman for Wales could increase by a similar amount, for example, from 191 to 364 cases (based on 2006/07 figures). However, the full financial impact will include a fuller report following further dialogue with the Public Services Ombudsman for Wales on the potential impact on his workload, whether his service is capable of absorbing any increase in the number of investigations and what action, if any, is jointly required. **This will be addressed in further work to be done by Easter.**

Impact on Welsh Health Legal Services

2.14 An increase in the number of claims coming forward, NHS organisations would be likely to increase their demand for advice from Welsh Health Legal Services in respect of complex claims, while demand for advice on smaller, simpler claims would be likely to reduce as more claims are settled locally. **Further work on the financial impact of the measure on WHLS will be undertaken by Easter to inform the final financial impact assessment, but at this stage it is estimated that the impact would be minimal.**

Advocacy support

2.15 The Advocacy and Assistance Working Group has recommended that existing patient support mechanisms in NHS organisations are used more effectively to prevent issues escalating. This is not about setting up a new service but better co-ordination of what is already available. Work carried out over the last 18 months in South East Wales Region will be shared with the rest of the NHS and there will be no costs associated with it.

2.16 Community Health Councils in Wales are already providing an advocacy service for people wishing to make a complaint about the NHS in Wales. The Advocacy and Assistance Working Group recommends this service should be enhanced and provided in conjunction with Action against Medical Accidents (AvMA) for those patients wishing to access the NHS Redress part of the arrangements. The current advocacy service costs **£490,000 per annum** from a total CHC budget of £3.25m. Requests for advocacy could increase this budget by between £73k (15 per cent) and £210k (43 per cent), which could be managed through efficiency savings generated by CHC mergers to reflect Trust merger areas.

2.17 **The full financial impact will confirm whether savings can be released (and over what period) and redirected towards an enhancement of the advocacy service.** Other options will also be considered, including training other CHC staff to be able to take on advocacy work alongside their other roles although these could be longer-term pieces of work in which cost savings would take time to realise.

2.18 At this interim stage it is estimated that an additional **£100,000 per annum** would be required for the first two years to allow for a predicted increase in demand for advocacy services. The additional funding would support the additional human resources costs and a service level agreement between the CHCs and AvMA. It is anticipated that the additional funding could be tapered as CHC efficiency savings were realised. **The final financial impact assessment will also consider the funding requirements for a more general service to be provided by Citizen's Advice Cymru.**

Mediation and facilitation

2.19 Both the Advocacy and Assistance Working Group and Legal Advice Working Group recommend the development of a more effective mediation service across Wales. There is already an Independent Complaints Facilitation Service available but there is relatively low uptake of the service, possibly because the service is funded by NHS Trusts who may look for cheaper ways to resolve issues. Some investment may therefore be required to boost the use of this service to enable the resolution of issues earlier, saving time and money later on in the process. At this stage it is estimated that an additional **£120,000** at least for the first year (an average of £15,000 per NHS Trust) to encourage the use of mediation and facilitation.

Legal costs and award of damages

2.20 In 2006-07 101 claims in Wales were settled for £20,000 or less at a total cost in damages of £791,000 and £692,000 in legal costs. The figures for 2005-06 were broadly similar. Using these figures to illustrate the potential impact of the measure on damages and legal costs, it is assumed that the average value of damages per claim is £7,832 and the average legal costs per claim are £6,851.

2.21 Using the 2006-07 average figures, a 15 per cent increase in claims settling for £20,000 or less would generate an additional 15 claims with damages totalling £117,480 and legal costs amounting to £102,765 – a total additional cost of £220,245. If the additional 15 cases settled at £20,000 the total additional cost would be £402,765.

2.22 Still using the 2006-07 figures, if the number of claims increase by DoH worst case scenario, 43 per cent, an additional 44 cases would be generated costing in total an additional £646,052 (using average damages) or £1.182 million if all 44 cases settled at £20,000.

2.23 If we assume that the DoH predictions are too low and there will be 60 per cent increase in cases, the costs could increase by between £895,663 or

£1.61 million (if all additional cases settle for £20,000).

2.24 In summary, depending on the percentage increase in claims and using average legal costs, the additional costs and damages could range **£220,000** (15 per cent) to **£896,000** (60 per cent).

2.25 The Legal Advice Working Group has concluded that specialist legal advice should be provided to people accessing the NHS Redress part of the arrangements at key stages of the process although it is recognised that not all patients will choose to do so at every stage. The cost of legal advice will depend on which method of remuneration is to be chosen. The figures above include average legal costs based on 2006-07 of £6,851 per claim. The Legal Advice Working Group has put forward some alternative options for establishing the legal costs:

Option 1: Fixed fee for whole process

2.26 Under the is option a fixed fee of £3,500 is proposed for cases where there is concession of liability and £5,000 for cases where there may be no agreement regarding liability between the Trust, the patient and their legal adviser and further investigation, evidence collation and analysis is required. An equal split between the number of cases attracting £3,500 fee and £5,000 fee is assumed.

Option 2: Fixed fee for various stages

2.27 This option assumes a fixed fee for various stages. This means that legal advice could be as low as £1,500 in many cases but rise to £3,000 or more in others which are more complicated or where there is no agreement. It assumes 50 per cent of cases could be settled within the £1,500 cost limit, 30 per cent within the £3,000 limit and 20 per cent within the £5,000 limit.

2.28 The table below shows the estimated financial impact of options 1 and 2, based on the 2006-07 figures. Option 2 is the cheapest, with forecast savings of between £488,000 (15% increase) and £678,000 (60% increase) when compared to the current average legal cost.

		Average cost	**Option 1**	**Option 2**
% increase on 2006-07 figures (101 claims)	**Total no. of claims £20,000 or under per annum**	**Total legal costs using average (£6851)**	**Total legal costs using Fixed Fee (50% £3,500,50% £5,000)**	**Total legal costs using Fixed Fee (50% £1,500, 30% £3000, 20% £5000)**
15	116	794,716	493,000	307,000
43	144	986,544	612,000	382,000
60	161	1,103,011	684,250	425,500

Option 3. Hourly rate for work undertaken

2.29 The Legal Advice Working Group also considered an hourly rate option, based on £175 per hour, but there was no agreement in the Group on how it

would be controlled. As such, it is not possible at this stage to estimate the costs of this option though these should be available in the final financial impact assessment.

Option 4. Composite costs

2.30 The fourth option considered allows for costs to be charged on an hourly rate of £175 for work carried out immediately following the investigation, capped at a total of £1,500. Late stages of work could be at a fixed fee or a similarly capped hourly rate. This would allow for simple cases where fewer hours work would be required to be paid appropriately whilst still maintaining control over the total possible fee. The total cost for solicitor's fees under this option would be a maximum of £4,500 but might be as low as £175. Further information will be required to estimate costs more accurately and this will be provided in the final financial impact assessment.

Clinical and Expert advice

2.31 As indicated above under the IR process, there is already estimated to be **£100k** in the system for the commissioning of independent clinical advice. The figures for 2006-07 legal costs shown above also contain an element for expert advice, although this is not shown separately. The cost of clinical advice can vary from as little as £450 for a report to over £1,000 depending on the complexity of the case and the speciality concerned. For the purposes of estimating costs, and based on a potential increases of 15%, 43% and 60% additional cases and an average of £700 per report, the **additional costs for clinical advice will be between £10,500 and £42,000 per annum.**

3. Conclusion

3.1 At this interim stage, net additional potential costs range from savings of £91k to additional costs of £1.171m, as shown in the table below. These figures will be tested further in the final stage of the analysis. Further work will also need to be done by Easter 2008 to estimate the impacts from LHBs taking on investigation of primary care complaints and on other parts of the system, such as Ombudsman's investigations and this will continue as the development of the detail progresses.

SUMMARY OF POTENTIAL ADDITIONAL COSTS AND SAVINGS (OVER 2006/07 FIGURES)

ITEM	BEST CASE SCENARIO (15% INCREASE)	MEDIUM CASE SCENARIO (43% INCREASE)	WORST CASE SCENARIO (60% INCREASE)	OTHER COSTS/ COMMENTS
Training and skills for staff directly involved in new arrangements	To be included in report by Easter	To be included in report by Easter	To be included in report by Easter	
Training for front line staff in disclosure and Root Cause Analysis	£300k in first year reducing to £150k in second year	£300k in first year reducing to £150k in second year	£300k in first year reducing to £150k in second year	
Guidance and embedding	N/A	N/A	N/A	£100k to be met from Departmental programme budget
Independent Review	-£354k	-£354k	-£354k	To be saved if Independent Review is discontinued
LHB investigation of primary care complaints	To be included in report by Easter	To be included in report by Easter	To be included in report by Easter	
Primary care NHS Redress element	TBC	TBC	TBC	To be determined in longer term piece of work
Impact on Ombudsman's investigations	To be included in report by Easter	To be included in report by Easter	To be included in report by Easter	
Impact on Welsh Health Legal Services	To be included in report by Easter	To be included in report by Easter	To be included in report by Easter	
Advocacy support from CHCs and agreement with AvMA	£100k in first year	£210k	£294k	
Support for Citizen's Advice Cymru	To be included in report by Easter	To be included in report by Easter	To be included in report by Easter	
Mediation and facilitation	£120k for first year			
Damages	£117k	£345k	£478k	

Costs - No cost structure - Option 1 - - Option 2	 £103k -£199k -£385k	 £295k -£80k -£310k	 £411k -£8k -£267k	
Clinical/Expert Advice	£11k	£30k	£42k	
TOTALS - With no cost structure - Option 1 - Option 2	 £397k £95k -£91k	 £826k £451k £221k	 £1.171m £752k £493k	

ANNEX A

Department of Health: NHS Redress Research

Background note

1. In 2004, the Department of Health (DoH) commissioned a piece of research from Professor Paul Fenn, University of Nottingham, et al, the objective of which was to assess the cost of an alternative compensation scheme for patients. The researchers assessed data collected by MORI in 2001 during face to face interviews with a randomly selected sample of adults. The total sample size was 8,206 and included patients from Wales (497) and Scotland (769).

2. Of those questioned and who provided answers (8,198), some 4.8% (395) considered that they had suffered illness, injury or impairment as a result of medical treatment or care. Of those, only 11.4% had pursued a legal claim for financial compensation. In a significant number of cases (271), people said that they did not want financial compensation. The researchers looked at various factors, which might have prohibited people from pursuing a claim, and concluded it was dependent on income, severity and access to legal aid.

3. DoH Economic Advisors used this work to predict the number of cases that might come forward under a scheme aimed at increasing access. Their predictions showed an increase of between 15 and 43 per cent. The survey sample included [?] people from Wales and if we assume that this sample was representative of the Welsh population then the DoH predictions could be seen as a useful basis on which to predict possible changes in behaviour in Wales that might arise from the NHS Redress Measure.